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NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 25th September 1954 :—

Issue No.	No. and date	Issued by	Subject
216	S. R. O. 3068, dated the 21st September, 1954.	Election Commission, India.	To fill a vacancy in the Council of States in the seats allotted to the State of Jammu and Kashmir.
	S. R. O. 3069, dated the 21st September, 1954.	Ditto.	Appointment of dates for election to the Council of States to fill a vacancy in the seats allotted to the State of Jammu and Kashmir.
217	S. R. O. 3070, dated the 21st September, 1954.	Ditto.	Final List of candidates for election to the House of the People from Midnapore-Jhargram Parliamentary Constituency.
218	S. R. O. 3071, dated the 20th September, 1954.	Delimitation Commission, India.	Corrigendum to S. R. O. 2937, dated the 8th September, 1954.
219	S. R. O. 3072, dated the 22nd September, 1954.	Ministry of Finance (Revenue Division)	The Central Government rescinds the Notification No. 33-Central Excises (S.R.O. 2521), dated the 30th July, 1954.
220	S. R. O. 3073, dated the 22nd September, 1954.	Delimitation Commission, India.	Final Order No. 17 in respect of the distribution of seats to, and the delimitation of, Parliamentary and Assembly Constituencies in the State of Madras.
221	S. R. O. 3074, dated the 23rd September, 1954.	Ditto.	Proposals in respect of distribution of seats allotted to the State of Vindhya Pradesh in the House of the People and the seats assigned to the Legislative Assembly of that State.
222	S. R. O. 3115, dated the 23rd September, 1954.	Ministry of Finance (Revenue Division)	Amendment made in the notification No. 42-Customs, dated the 9th October, 1948.
	S. R. O. 3116, dated the 23rd September, 1954.	Ditto.	Exemption of Battersea clay liners from so much of customs duty leviable in excess of 36⅓ per cent.

Issue No.	No. and date	Issued by	Subject
223	S. R. O. 3117, dated the 23rd September, 1954.	Election Commission, India.	Appointment of Sahibzada Abdur Rehman to assist the Returning Officer for election to fill a vacancy in the Council of States in the seats allotted to the State of Jammu and Kashmir.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

ELECTION COMMISSION, INDIA

New Delhi, the 24th September 1954

S.R.O.3125.—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. PB-P/54(2)/BYE, dated the 23rd August, 1954, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Ganga Bishan, Advocate, Sirsa, District Hissar, Punjab.

[No. PB-P/54(5)/BYE.]
By Order,

P. N. SHINGHAL, Secy.

MINISTRY OF LAW

New Delhi, the 22nd September 1954

S.R.O.3126.—In exercise of the powers conferred by clause (a) of Rule 8B of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Law No. S.R.O. 1035, dated the 2nd June 1953, namely:—

In the Schedule to the said notification, for the entries in item 7 the following shall be substituted namely:—

"7. Punjab—

(i)	All Courts	Government Pleaders.
(ii)	Courts in Simla (other than the High Court)	Shri Shankar Nath, M.A., L.L.B., Advocate and Notary Public, Rock Point, Simla."

[No. F.31(3)/54-L.]

New Delhi, the 24th September 1954

S.R.O. 3127.—In exercise of the powers conferred by section 3 of the Maintenance Orders Enforcement Act, 1921 (XVIII of 1921), and in supersession of the notification of the Government of India in the Home Department No. 24/9/37-Judl.

dated the 15th December, 1938, the Central Government hereby declares that the said Act applies in respect of the Zanzibar protectorate.

[No. F.26(16)/54-L.]

B. N. LOKUR, Joint Secy.

MINISTRY OF HOME AFFAIRS

ORDER

New Delhi, the 27th September 1954

S.R.O. 3128.—In exercise of the powers conferred by clause (b) of sub-section (7) of section 63 of the Andhra State Act, 1953 (30 of 1953), the President hereby directs that the following amendment shall be made in the Order of the Government of India in the Ministry of Home Affairs, No. S.R.O. 2278 dated the 9th December, 1953, namely:—

In the said Order, before the Explanation, the following proviso shall be inserted, namely:—

"Provided that where a transferred officer holds, while serving in connection with the affairs of the State of Andhra, a post carrying a scale of pay higher than the scale of pay of the post which he would have held if he had continued to serve in connection with the affairs of the State of Madras, the allowance admissible to him under this Order shall be calculated at the rate applicable to him, on the pay which he would have drawn if he had continued to serve in connection with the affairs of the State of Madras."

[No. 26/7/53-AIS(I).]

N. N. CHATTERJEE, Dy. Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 21st September 1954

S.R.O. 3129.—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (X of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of Clause (i) of section 12 of the said Act shall not apply to the South Indian National Bank, Ltd., Mavelikara, for the period ending with the 31st March 1955.

[No. F.4(179)-F.I/54.]

New Delhi, the 27th September 1954

S.R.O. 3130.—In exercise of the powers conferred by section 23 of the Rehabi-'tation Finance Administration Act, 1948 (XII of 1948), the Central Government hereby directs that the following further amendments shall be made in the Rehabilitation Finance Administration Rules, 1948, namely:—

In the said Rules,—

1. For rules 11, 12 and 13, the following rules shall be substituted, namely:—

"11. *Guarantee of losses to scheduled banks.*—A scheduled bank making an application to the Administration for assistance under clause (b) of section 12, may be required to submit to the Administration the latest available balance sheet of the bank and such other information regarding the standing and financial position of the bank as the Administration may ask for.

12. *Prohibition of guarantee.*—The Administration shall not guarantee the losses of any scheduled bank, not approved by it.

13. *Option to guarantee.*—The Administration may in its discretion refuse to guarantee any loss under clause (b) of section 12, if in its opinion the loan has not been made to a displaced person or has not been made for purposes of business or industry or does not conform to the other provisions of the Act and these rules. A scheduled bank may, before granting a loan, submit full particulars thereof to the Administration to ascertain whether the loan will be acceptable for the purposes of clause (b) of section 12. If the Administration approves the grant of the loan, it shall be bound, when subsequently called upon to do so, to guarantee the loss on the loan, unless the terms on which the loan has been granted differ in any material respect from those indicated in the reference made to the Administration.

The total amount which may be guaranteed in respect of any scheduled bank and the terms and conditions on which such a guarantee may be given shall be subject to the prior approval of the Central Government."

2. Rule 14 shall be omitted.

3. In Rule 16.—

(i) in clause A—

(a) sub-clause (vii) shall be omitted; and sub-clauses (viii) and (ix) shall be renumbered as sub-clauses (vii) and (viii) respectively;

(b) in sub-clause (vii) as so renumbered, for the brackets, figures and word "(iii) to (vii)", the brackets, figures and word "(iii) to (vi)" shall be substituted;

(ii) for clause E, the following clause shall be substituted, namely:—

"E. Total liability of the Administration as at the close of the half-year on guarantees under clause (b) of section 12;".

[No. F. 7(34)-F.III/54.]

N. C. SEN GUPTA, Dy. Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)

CUSTOMS

New Delhi, the 2nd October 1954

S.R.O.3131.—In exercise of the powers conferred by sub-section (3) of section 43B of the Sea Customs Act, 1878 (VIII of 1878), the Central Government hereby directs that the following amendments shall be made in the Customs Duties Drawback (Dry Radio Batteries) Rules, 1954, published with the notification of the Government of India in the Ministry of Finance (Revenue Division), No. 68-Customs, dated the 17th July, 1954, the said amendments having been previously published as required by sub-section (3) of the said section, namely:—

Amendments

In the said rules—

(1) in rule 5—

(i) in sub-rule (2), for the word "nominate" the words "authorise in this behalf" shall be substituted, and for the words "nominated Chief Customs Officer", the words "authorised Chief Customs Officer" shall be substituted; and

(ii) in sub-rule (4), for the words "nominated Chief Customs Officer", in both the places in which they occur, the words "authorised Chief Customs Officer" shall be substituted.

(2) in rule 6—

in sub-rule (2), for the words "nominated Chief Customs Officer", in both the places in which they occur, the words "authorised Chief Customs Officer" shall be substituted.

(3) in rule 7—

(i) in sub-clause (ii) of clause (a) of sub-rule (1), for the words "nominated Chief Customs Officer", the words "authorised Chief Customs Officer" shall be substituted; and

(ii) in sub-rule (2), for the words "nominated Chief Customs Officer", the words "authorised Chief Customs Officer" shall be substituted.

[No. 115.]

S.R.O. 3132.—In exercise of the powers conferred by sub-section (1) of section 43B of the Sea Customs Act, 1878 (VIII of 1878), the Central Government hereby directs that a drawback shall be allowed in accordance with, and subject to, the provisions of the said section and any rules made thereunder, in respect of duty paid foreign materials used in the manufacture of linoleum when such linoleum is manufactured in, and exported from, India or shipped as stores on board a ship proceeding to a foreign port.

[No. 116.]

S.R.O. 3133.—In exercise of the powers conferred by sub-section (3) of section 43B of the Sea Customs Act, 1878 (VIII of 1878), the Central Government hereby makes the following rules, namely:—

1. **Short title.**—These rules may be called the Customs Duties Drawback (Linoleum) Rules, 1954.

2. **Definitions.**—In these rules, unless the context otherwise requires,—

(a) 'the Act' means the Sea Customs Act, 1878 (VIII of 1878);

(b) 'section' means any section of the Act;

(c) 'linoleum' means floor covering material made by impregnating a foundation of hessian canvas with a composition of oxidised oil, resins, pigments, fillers, driers, powdered cork or wood flour or any combination thereof and includes material ordinarily known under the following names,—namely plain linoleum, inlaid linoleum, printed linoleum, 'Moire', 'Jaspe' and 'Marble' sheet linoleum. It shall also include printed felt base otherwise known as 'Indoleum' *i.e.*, a floor covering consisting of impregnated paper-felt on which the body colour and printed pattern has been applied;

(d) 'imported materials' means materials of all kind imported on payment of customs duty into India and used in the manufacture of linoleum;

(e) 'registered manufacturer' means a manufacturer of linoleum, who has registered himself for the purpose of these rules in accordance with the provisions of rule 5.

3. **Goods in respect of which drawback may be paid.**—Subject to the provisions of the Act and these rules, a drawback shall be allowed in the case of linoleum, (hereinafter referred to as the goods) manufactured in, and exported from, India or shipped as stores for use on board a ship proceeding to a foreign port in respect of imported materials used in the manufacture of such goods.

4. **Period for which drawback admissible.**—A drawback under these rules shall be admissible for the period during which a notification in respect of the goods is in force under sub-section (1) of section 43B.

5. **Registration of manufacturers.**—(1) A drawback permissible under these rules shall apply in respect of such goods as have been manufactured by a person who has, in accordance with the provisions of these rules, registered himself for such purpose.

(2) An application for registration shall be made by the manufacturer of the goods to the Chief Customs Authority who may authorise any Chief Customs Officer, (hereinafter referred to as "the authorised Chief Customs Officer") to act on its behalf in this respect.

(3) Such application shall describe the varieties, brands, if any, and other specifications of the goods in respect of which registration is desired and shall, in respect of each of such variety or brand, furnish:—

(a) the description and quantity of different materials used in the manufacture of one hundred years of the goods,

(b) the average amount of customs duty, based on the values and the amounts of duty on importation during the preceding year of such of these materials as are imported and are not duty-free, on the quantities referred to in the foregoing sub-clause.

(4) The authorised Chief Customs Officer may register the applicant as a manufacturer for the purpose of these rules, subject to the applicant executing a bond for Rs. 1,000 or such increased amount not exceeding Rs. 10,000 as may be fixed undertaking not to vary the composition or formula for any brand or variety of the goods, or the quantity of different imported materials used in the manufacture, without the prior permission of the authorised Chief Customs Officer.

(5) Any manufacturer found varying the formula or composition of the goods contrary to the undertaking furnished as contemplated in sub-rule (4) shall be liable to have his registration cancelled besides any other penalties to which he may be liable under the Act.

6. **Rate of drawback.**—(1) The rate of drawback of duty admissible under these rules on the shipment of the goods in the prescribed manner shall be 7/8th of the average amount of customs duty paid on materials used in the manufacture of goods, and this shall be determined every 3 months on the basis of statements furnished by the registered manufacturer and verified by the authorised Chief Customs Officer, of the average value and duty paid on the imported materials used in the manufacture of goods, imported during the preceding year or any longer period in respect of any or all of the materials, as the authorised Chief Customs Officer may deem convenient.

(2) The drawback so calculated shall be in force for a period of 3 calendar months beginning with the first of the month succeeding that in which it is determined and shall apply to shipments made during that period from any port in India.

7. **Manner of allowing drawback.**—(1) Drawback shall be allowed on the shipment of the goods from any port in India subject to the following conditions:—namely,

(a) the shipper of the goods will make a declaration on the relative shipping bill:—

(i) that a claim for drawback under section 43B is being made, and

(ii) that to the best of his knowledge and belief, the composition of the goods and the proportion of the different imported duty-paid materials used in the manufacture of the goods have not been altered subsequent to the registration of the manufacturer save with the prior permission of the authorised Chief Customs Officer.

(b) The shipper shall in the shipping bill, furnish, in addition to information required under section 29 such additional information as may, in the opinion of the Customs Collector, be necessary for the purpose of verification of the claim for drawback, and in particular the Customs Collector may require such additional information in respect of the following matters, namely:—

(i) the description of the goods,

(ii) the name of the manufacturer, the registration number of the manufacturer and the authority or officer with whom he got himself registered,

(iii) the particulars of any brand or trade mark attached to the goods,

(iv) length, width, weight and like particulars in respect of the goods.

(2) No drawback shall be allowed on the shipment of goods in respect of which the composition or formula has been varied contrary to the undertaking mentioned in sub-rule (4) of rule 5.

8. **Powers of Customs Collector.**—For the purposes of enforcing these rules, the Customs may require:—

(a) a registered manufacturer to produce any books of accounts or other documents of whatever nature relating to the proportion and quantity of different materials used in the manufacture and the value and duty paid on imported materials used in the manufacture;

(b) any person who has been concerned at any state with the goods to produce any books of accounts or other documents of whatever nature relating to the goods; and

(c) the production of such certificates, documents and other evidence in respect of each claim for drawback as may be necessary.

9. **Access to Manufactory.**—A registered manufacturer of goods in respect of which a drawback is claimed shall give access to every part of his manufactory to any Officer of the Central Government specially authorised in this behalf by the Chief Customs Officer or the Chief Customs Authority to enable the officer so authorised to inspect the processes of manufacture and to verify by actual check or otherwise the statements made in support of the claim for drawback.

[No. 117.]

JASJIT SINGH, Dy. Secy.

ORDER

STAMPS

New Delhi, the 22nd September 1954

S.R.O. 3134.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (II of 1899), the Central Government hereby remits the whole of the stamp duty chargeable under the said Act on the instrument of lease to be executed in favour of the Swedish Legation in India in respect of a plot of land measuring 9·846 acres in Chanakya Puri, (Diplomatic Enclave), New Delhi.

[No. 16.]

M. G. MATHUR, Under Secy.

CENTRAL BOARD OF REVENUE

CUSTOMS

New Delhi, the 22nd September 1954

S.R.O. 3135.—In exercise of the powers conferred by section 4 of the Land Customs Act, 1924 (XIX of 1924), the Central Board of Revenue hereby directs that the following further amendment shall be made in its Notification No. 21-Customs, dated 2nd February 1952, namely:—

In the Schedule annexed to the said notification, under the heading *"DIU FRONTIER"*, the entries in columns 1 and 2 against items Nos. 2 and 3 shall be omitted.

[No. 112.]

W. SALDANHA, Secy.

MINISTRY OF FOOD AND AGRICULTURE

(Agriculture)

New Delhi, the 22nd September 1954

S.R.O. 3136.—In pursuance of the provisions of clause (S) of Section 4 of the Indian Central Oilseeds Committee Act, 1946, (IX of 1946) the Central Government is pleased to notify the appointment of Shri Villuri Venkataramana, Member, Rajya Sabha, as a member of the Indian Central Oilseeds Committee *vice* Shri R. S. Doogar.

[No. F.5-69/54-Com-I.]

F. C. GERA, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 22nd September 1954

S.R.O. 3137.—In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148, of the Constitution, the President, after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department, hereby makes the following amendment in the Contributory Health Service Scheme Rules, 1954, published with the notification of the Government of India in the Ministry of Health S.R.O. No. 2128, dated the 23rd June 1954, namely:—

In sub-rule (2) of rule 1 of the said Rules, clause (c) shall be omitted, and clauses (d) and (e) shall be relettered as clauses (c) and (d) respectively.

2. This amendment shall take effect from the 1st October 1954.

[No. F.6(1)-30/54-Hosp.]

N. B. CHATTERJI, Dy. Secy.

MINISTRY OF TRANSPORT

(Transport Wing)

New Delhi, the 22nd September 1954

S.R.O. 3138.—In pursuance of clause (1) of Article 239 of the Constitution of India, the President is pleased to direct that the Chief Commissioner of Kutch shall, subject to the control of the President, and until further orders, exercise powers and discharge the functions of a State Government under the provisions of the Road Transport Corporations Act, 1950 (LXIV of 1950) in the State of Kutch.

[No. 33-T(20)/51.]

R. S. BAHL, Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

CORRIGENDUM

New Delhi, the 22nd September 1954

S.A.O. 3139.—In this Ministry's notification No. S.R.O. 2767, dated the 17th August 1954, published in the *Gazette of India*, Part II—Section 3, dated the 28th August 1954, in part (b) *for* the word "OR" *read* "OF".

[No. 5/8/54-FC.]

ORDER

New Delhi, the 27th September 1954

S.R.O. 3140.—The Central Government hereby—

(a) directs, in pursuance of the provision of clause (2) of the Order of the Government of India in the Ministry of Information & Broadcasting No. S.R.O. 781, dated the 1st March 1954 and in further modification of the Order of the Government of India in the Ministry of Information and Broadcasting No. 782 dated the 1st March 1954, that the Advisory Panel of the Central Board of Film Censors at Bombay shall consist of 32 members with effect from the 2nd October 1954.

(b) appoints, after consultation with the said Board, Rev. H. O. Mascarenhas, Sri G. L. Chandavarkar, Srimati Guli H. Kirpalani, Major General M. G. Bhandari, Sri Munshi Mihar Mohamed Khan Fazal Mohamed Khan, Sri P. O. Upadhyaya, Sri P. V. Gadgil and Sri B. R. Dhurandhar as members of the Advisory Panel at Bombay with effect from the 2nd October 1954.

[No. 14/3/54-FC.]

D. KRISHNA AYYAR, Under Secy.

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 24th September 1954

S.R.O. 3141.—In exercise of the powers conferred by sub-section (6) of section 59 of the Damodar Valley Corporation Act, 1948 (XIV of 1948), the Central Government hereby rescinds the Damodar Valley Corporation (Advisory Committee) Rules, 1949, published with the notification of the Government of India in the late Ministry of Works, Mines and Power, No. DW 10/110/49, dated the 23rd May, 1949.

[No. 40(27)DVC/54.]

R. R. BAHL, Dy. Secy.

MINISTRY OF WORKS, HOUSING AND SUPPLY

New Delhi, the 24th September 1954

S.R.O. 3142.—In exercise of the powers conferred by sub-section (1) of section 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952), the Central Government hereby directs that the powers exercisable by it under sections 7 and 8 of the said Act shall be exercisable also by the Chief Commissioners of the States of Ajmer, Bhopal, Coorg and Kutch and by the Chief Secretaries to the Governments of the States of Himachal Pradesh and Vindhya Pradesh in respect of property situated within the State concerned.

[No. 8064-EII/54.]

K. K. SHARMA, Dy. Secy.

(Central Boilers Board)

New Delhi, the 25th September 1954

S.R.O. 3143.—The following draft of a further amendment to the Indian Boiler Regulations, 1950, which the Central Boilers Board proposes to make in exercise of the powers conferred by section 28 of the Indian Boilers Act, 1923 (V of 1923), is published as required by sub-section (1) of section 31 of the said Act, for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 15th December 1954.

Any objections or suggestions which may be received from any person with respect to the said draft before the date specified will be considered by the Central Boilers Board. Such objections or suggestions should be addressed to the Secretary, Central Boilers Board, Ministry of Works, Housing and Supply, North Block, New Delhi.

Draft Amendment

In clause (c) of Regulation 49, and in clause (c) of Regulation 54 of the said Regulations, for the expression "Thinner than 9 S.W.G. upto and including 6 S.W.G." the expression "Thicker than 10 S.W.G. and upto and including 6 S.W.G." shall be substituted.

[No. BL-304(10)/54.]

M. N. KALE, Secy.

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 25th September 1954

S.R.O. 3144.—In exercise of the powers conferred by section 47 of the Indian Railways Act, 1890 (IX of 1890) read with the notification of the Government of India in the late Department of Commerce and Industry, No. 801, dated the 24th March 1905, the Railway Board hereby directs that the following further amendment shall be made in the General Rules for all open lines of Railways in India

published with the notification of the Government of India in the late Railway Department (Railway Board), No. 1078-T, dated the 9th March 1929, namely:—

In the Schedule appended to Part III of the said rules, against serial No. 58, for the entries in columns 2 and 3, the following entries shall be substituted namely:—

2	3
Ferro-Silicon 15 per cent and above.	In casks, cases, sacks or drums.
Ferro-Silicon. Less than 15 per cent.	80 per cent and over in fine powder in casks or drums.

[No. 1400-TG.]

RANJIT SINGH, Director.

MINISTRY OF NATURAL RESOURCES AND SCIENTIFIC RESEARCH

New Delhi, the 23rd September 1954

S.R.O 3145.—In exercise of the powers conferred by section 5 of the Mines and Minerals (Regulation and Development) Act, 1948 (LIII of 1948), the Central Government hereby directs that the following further amendment shall be made in the Mineral Concession Rules, 1949, namely:—

In clause 8 of Schedule II to the said Rules, after the word "Gypsum" the word "limestone" shall be inserted.

[No. MII-152(48)/54.]

M. MALHOTRA, Under Secy.

MINISTRY OF PRODUCTION

New Delhi, the 25th September 1954

S.R.O. 3146.—In exercise of the powers conferred by section 17 of the Coal Mines (Conservation and Safety) Act, 1952 (XII of 1952), the Central Government hereby makes the following rules, the same having been previously published as required by sub-section (1) of the said section, namely:—

COAL MINES CONSERVATION AND SAFETY RULES

CHAPTER I

PRELIMINARY

Short title and extent.—(1) These rules may be called the Coal Mines (Conservation and Safety) Rules, 1954.

(2) They extend to the whole of India except the State of Jammu and Kashmir.

Definitions.—In these Rules, unless the context requires otherwise,—

(a) "Act" means the Coal Mines (Conservation and Safety) Act, 1952 (XII of 1952);

(b) "Central Government" includes in relation to functions delegated under sub-section (2) of section 5 of the Act to the Board, the Board acting within the scope of the authority given to it under that sub-section;

(c) "Chairman" means the Chairman of the Board;

(d) "Member" means a member of the Board appointed under Section 4 of the Act;

(e) "Month" means a month reckoned according to the British Calendar;

(f) "Section" means a section of the Act;

(g) "Treasury" means any Government Treasury or sub-treasury.

CHAPTER II

THE BOARD AND ITS PROCEDURE

3. **Time and place of meetings.**—(1) The Chairman may at any time call a meeting of the Board and shall do so if a requisition for that purposes is presented to him by three or more members.

(2) The meetings of the Board shall, unless the Chairman in any case otherwise directs, be held in Calcutta.

4. **Notice of meetings.**—As far as possible notices of the time and place of any intended meeting of the Board signed by the Chairman or the Secretary shall be delivered at or posted to the usual place of residence of every member present in India not less than seven clear days before the date of the meeting. Provided that an emergent meeting may be called by the Chairman at any time.

5. **Presiding at meetings.**—The Chairman shall preside at every meeting of the Board at which he is present. If the Chairman is absent from a meeting and it is not expedient to adjourn the meeting the members present shall elect one of their member to preside over the meeting and the member so elected shall at that meeting exercise all the powers of the Chairman.

6. **Quorum.**—No business shall be transacted at a meeting of the Board unless at least three members including the Chairman are present:

Provided that if at any meeting less than three members including the Chairman are present, the Chairman may adjourn the meeting to a date not less than seven days later and inform the members present and notify other members that he proposes to dispose of the business at the adjourned meeting irrespective of there being a quorum, and it shall thereupon be lawful to dispose of the business at such adjourned meeting irrespective of the number attending.

7. **Disposal of business.**—(1) Every question upon which the Board is required to deliberate shall be considered either at its meetings or, if the Chairman so directs, by sending the necessary papers to members for opinion:

Provided that the papers need not be sent to any member who is absent from India.

(2) When a question is referred for opinion, any member may request that the question be considered at a meeting of the Board, and thereupon the Chairman may, and if the request is made by three or more members shall direct that it be so considered.

8. **List of business.**—(1) The Chairman shall send or cause to be sent to each member present in India, along with the notice of the meeting or as soon as possible thereafter, a list of business to be disposed of at that meeting.

(2) No business which is not on the list shall be considered at a meeting without the permission of the Chairman.

9. **Decision by majority.**—(1) Every question at a meeting of the Board shall be decided by a majority of votes of the members present and voting on that question.

(2) Every question referred to the members for opinion shall, unless the Chairman reserves it for consideration at a meeting be decided in accordance with the opinion of the majority recording opinions.

(3) In the case of an equal division of votes the Chairman shall exercise an additional vote and in the case of an equal division of opinion, the opinion of the Chairman shall prevail.

10. **Record of business.**—A record shall be maintained of all business transacted by the Board, copies of which shall be submitted to the Central Government.

11. **Revision.**—(1) The Central Government may for reasons to be recorded in writing review any decision of the Board and pass such orders in the matter as it thinks fit.

(2) Tht Board shall give effect to all orders passed by the Central Government under sub-rule (1).

12. **Salary and allowances of the Chairman.**—(1) The Chairman shall be paid such salary and allowances from the Fund as the Central Government may from time to time fix.

(2) The Chairman shall also be paid from the Fund travelling allowances for journeys performed by him in his official capacity, at the same rates and on the same conditions as are prescribed by rules in the case of officers in the employ of the Central Government drawing the same salary as the Chairman.

(3) When the Chairman is in the permanent service of the Government contributions on account of the Chairman's pension, Provident Fund, leave salary and passages shall be paid from the Fund at such rates as may be fixed by the Central Government.

(4) Save and except as permitted by the Central Government the Chairman shall not engage in any trade or profession or undertake any employment or duties other than his duties under the Board.

(5) In any case not provided for in sub-rule (3), the Central Government may grant to the Chairman leave on like terms and conditions as are prescribed by the Central Government. Leave salary payable in respect of such leave may be paid from the Fund.

13. **Powers and duties of the Chairman.**—(1) The Chairman shall be responsible for the proper functioning of the Board and the implementation of its decisions and the discharge of its duties under the Act and he may in his discretion refer any matter to the Central Government for orders.

(2) Subject to the control of the Chairman the Secretary or such other officer as may be appointed for the purpose of this rule, shall be the Principal Executive Officer of the Board and, as such, he shall—

(a) present all important papers and matters to the Board as early as practicable;

(b) issue directions as to the method of carrying out the decisions of the Board;

(c) grant or subject to a resolution by the Board authorise some other person to grant, receipts on behalf of the Board for all moneys received under the Act;

(d) maintain or cause to be maintained an account of the receipts and expenditure of the Board; and

(e) present an annual draft report on the working of the Board to the Board for approval and submit the report in the form approved by the Board to the Central Government.

(3) The Chairman may sanction expenditure on contingencies supplies and services and purchase of articles required for the working of the office of the Board and required for the execution of measures in furtherance of the objects of the act subject to budget provisions to the condition that the expenditure on any single object or item of work does not exceed Rs. 1,000:

Provided that the Chairman may in writing delegate such of his powers under this sub-rule to the Secretary or other officer of the Board as he considers appropriate.

14. **Secretary to the Board.**—(1) The Secretary to the Board shall be a person appointed by Central Government in consultation with the Board and his remuneration and terms of service shall be as laid down by the Central Government.

(2) The Secretary shall perform such duties as are imposed upon him by these rules and such other duties as may be assigned to him by the Board or by the Chairman.

15. **Board's establishment.**—(1) (a) The Board shall, from time to time appoint such other establishment and fix the salaries and allowances of all officers and servants to be employed by it, and may require security to be taken from such of them and to such amount as it thinks fit; the scales of pay allowed by the Board for the staff shall, as far as possible, correspond to the scales applicable to similar posts under the Government of India:

Provided that no post the maximum salary of which exceeds rupees five hundred per mensem shall be created without the previous sanction of the Central Government.

(b) The posts of officers of the Board shall be divided into two classes corresponding to class I and II posts of Gazetted officers of the Central Government.

(2) (a) All vacancies for direct recruitment of officers and staff of the Board shall be advertised in the principal newspapers in India and simultaneously notified to the Regional Employment Exchange at Calcutta.

(b) A statement of all applications received from candidates and recommendations from the Employment Exchange shall be placed before a Selection Committee appointed by the Board. The Selection Committee shall recommend to the Chairman candidates suitable for the appointment in order of merit after examining the applications and interviewing or testing the candidates:

Provided that the Board shall act as the Selection Committee in respect of appointments to the posts of officers.

(c) If a vacancy in the Board's establishment is to be filled up by promotion, the cases of all the candidates for promotion shall be examined by a Promotion Committee set up by the Board and the recommendations of the Committee shall be placed before the authority competent to make the appointment:

Provided that for appointments to the posts of officers the Board shall perform the functions of the Promotion Committee.

(3) Subject to the scale of establishment fixed under sub-rule (1) and subject to the provisions of sub-rule (2) the Chairman shall have power to appoint, dismiss, suspend, reduce or grant leave to any person in the service of the Board:

Provided that—

(i) no person shall be appointed to, or dismissed from, an office the maximum salary of which exceeds rupees five hundred without the sanction of the Central Government;

(ii) no person shall be appointed to, or dismissed from, an office the maximum salary of which exceeds rupees two hundred and fifty but does not exceed rupees five hundred without the sanction of the Board at a meeting;

(iii) the grant of leave, pay and allowances to officers and servants of the Board, who are not Government servants, shall be regulated by rules made by the Board; and

(iv) the grant of leave, pay and allowances to a Government servant, whose services have been lent or transferred to the Board shall be regulated according to the appropriate rules framed by the Central Government and applicable to such Government servant.

(4) In exercising the powers conferred by clause (c) of sub-rule (2) the Board shall apply the principles of the rules, framed by the Central Government for the corresponding classes of Government servants.

(5) Save with the previous sanction of the Central Government, no travelling allowance shall be paid to any officer or servant of the Board in excess of the amount which would be admissible under the Supplementary Rules framed by the Central Government to a Government servant of the corresponding grade.

16. **Allowances of members.**—(1) A Government servant appointed as a member shall be paid for attending a meeting of the Board such travelling allowance from the Fund as would be admissible to him under the appropriate rules if the journey had been performed on Government duty.

(2) A member performing a journey on the business of the Board with the approval of the Chairman shall be paid from the Fund, such travelling allowance as would be admissible to him under the appropriate rules if the journey had been performed on Government duty.

CHAPTER III

COMMITTEES OF ENQUIRY

17. (1) The Central Government may appoint a Committee of Enquiry to inquire into a reference arising out of an order under sub-section (3) of section 13 and such Committee shall consist of—

(a) the Chairman or a member of the Board as Chairman;

(b) (i) a person holding a first class colliery manager's certificate of competency nominated by the Chairman and qualified by experience to dispose of the question referred to the Committee;

(ii) a person who shall be appointed to represent the interest of persons employed in the mine.

(2) No person shall be appointed to the Committee who is an officer of the Board or of the Department of Mines.

18. (1) The Committee shall hear and record such information as the Board or the owner, agent or manager of the coal mine concerned may place before it; and may also obtain the opinion of such other person as it may deem appropriate.

(2) The Committee shall report its findings to the Central Government.

(3) On receiving such report the Central Government may pass such orders as it deems appropriate.

(4) The decision of the Central Government shall be binding on the Board and the owner, agent or manager of the coal mine.

19. The Members of a Committee of Enquiry shall be paid from the fund such remuneration, in addition to their actual travelling expenses in connection with the work of the Committees, as the Central Government may fix.

CHAPTER IV

ADVISORY COMMITTEES

[Constituted by the Central Government under Section 15(1) of the Act]

20. **Technical Advisory Committee (Mining).**—(1) The Technical Advisory Committee (Mining) shall be composed of the following members:—

(a) a technically qualified member of the Board or a person nominated by the Board—Chairman;

(b) the Chief Inspector of Mines or an Inspector nominated by him;

(c) the Mining Adviser, Government Railways or a person, in the service of Government having suitable mining qualifications nominated by the Board;

(d) Director of Geological Survey of India or his nominee.

(e) such representatives of the mining or labour interests concerned as the Committee or the Board may deem necessary and appropriate to co-opt for its deliberations;

An Inspecting Officer of the Board will act as Secretary to the Committe.

(2) The Committee will advise the Board in matter arising out of conservation of coking coal and certain aspects of stowing and the terms of reference tc the Committee shall be as follows:—

(a) to recommend raising quotas in each colliery working Selected 'A', Selected 'B' Grade I and Grade II coking coal and such other coal, as may be specified by the Board from time to time, consistent with safety and future extraction without undue loss of coal and undue increase in cost;

(b) to examine the economics of restrictions of output of coking coal and the effect of such restriction on the cost of production of the colliery.

(c) to examine or assess the necessity of and to advise on mining in the colliery, in which restriction of output is recommended, of other seams having coking coal or coal which on beneficiation is likely to yield coking coal or coal suitable for blending or coal of any other variety, including non-coking coal;

(d) to advise on the necessity and extent of stowing for safety or conservation of coal;

(e) to examine or assess the necessity of installation of beneficiation plant at collieries where such beneficiation is likely to yield economically coking coal or coal suitable for blending;

(f) to advise on other allied or incidental matters which may be specifically referred to the Committee by the Board.

(3) The Committee may consult or obtain information from such persons as it deems appropriate.

21. **Advisory Committee on Stowing.**—(1) The Advisory Committee on stowing shall be constituted as follows:—

(a) a member of the Board nominated by the Board—Chairman;

(b) the Chief Inspector of Mines in India or his nominee;

(c) the Director, Fuel Research Institute or his nominee;

(d) two representatives to be nominated by the Indian Mining Association and one representative each by the Indian Mining Federation and Indian Colliery Owners' Association.

An officer of the Coal Board shall be nominated as Secretary of the Committee by the Chairman.

(2) Each nominated member may be assisted by one adviser to be nominated by the respective associations, who shall possess a first class colliery manager's certificate of competency and have knowledge of stowing.

(3) A nominated member shall hold office for a period of one year and shall be eligible for re-nomination.

(4) A nominated member may resign his office by letter addressed to the Chairman of the Board.

(5) Not later than 15 days after the occurrence of a vacancy in the case of a nominated member or at any time within one month of the date when a vacancy will occur in the ordinary course of events the body concerned shall on receipt of advice from the Board communicate to the Chairman a nomination to fill the vacancy and the nomination shall be effective when accepted by the Central Government.

(6) The Committee shall advise the Board on such matters, relating to stowing for safety and conservation in coal mines and the grant of assistance for stowing in coal mines, as may be referred to it by the Board.

22. **The Research Advisory Commitee.**—(1) The Research Advisory Committee shall be composed of the following members:—

(a) a member of the Board nominated by the Board—Chairman.

(b) the Chief Inspector of Mines in India;

(c) the Director, Fuel Research Institute;

(d) the Principal, Indian School of Mines and Applied Geology;

(e) the Principal, College of Mining and Metallurgy, Benares Hindu University.

(f) two Mining Engineers having special knowledge of stowing and research connected therewith to be nominated by the Board.

An officer of the Board shall be nominated as Secretary to the Committee.

(2) The members of the Committee except the Chairman, the Chief inspector of Mines in India, the Director, Fuel Research Institute and the Principal, Indian School of Mines and Applied Geology shall hold office for a period of 3 years but shall be eligible for re-appointment.

(3) The Committee shall advise the Board regarding the nature and extent of research to be undertaken by the Board, the problems to be investigated, the schemes of research to be assisted by the Board and also examine periodically the reports submitted by the Investigating Officer

(4) The Committee shall publish half-yearly reports showing the research work done by it and the use to which such research work has been put by the collieries.

23. **General.**—(1) Each non-official member including a co-opted member of an Advisory Committee shall be paid for attending a meeting o' the Committee such remuneration as may be fixed by the Central Governn and the actual travelling expenses incurred by him in attending a meeting (ny other purpose in connection with the business of the Committee.

(2) Each Government servant appointed or co-opted as er of a Committee shall be paid for journeys connected with the bu ie Committee such travelling allowance from the funds of the Board admissible to him under the appropriate rules if the journey had be on Government duty.

(3) Travelling allowance and remuneration at such scales as may be fixed by the Board with the approval of the Central Government may also be paid to such other persons as with the approval of the Board are required to assist or advise the Board or any of the Advisory Committees.

(4) The Chairman of the Board may issue instructions regarding the conduct of the business of the Committees, maintaining records of the proceedings of the Committees and such other matters as he may deem appropriate.

(5) All proceedings of meetings of the Advisory Committees and all recommendations of the Committees shall be placed before the Board.

CHAPTER V

LEVY AND COLLECTION OF EXCISE DUTY

24. **Recovery of excise duty.**—(1) The duties of excise imposed under section 8 on coal and coke shall be recovered:—

(i) When such coal or coke is despatched by rail from collieries by the Railway administrations concerned, by means of surcharge on freight:—

(a) from the consignor, if the freight charges are being prepaid at the forwarding station,

(b) from the consignee, if the freight charges are collected at the destination of the consignment,

(c) from the party paying the freight, if the consignment is booked on the "weight only" system:

Provided that in all cases where coal or coke is despatched by rail from collieries to any station outside India, the duty of excise shall be recovered from the consignor at the forwarding station.

(ii) When such coal or coke is despatched from collieries by means other than rail, namely, by road, river and tramway from the owner of the colliery concerned and collected in the manner provided in rules 29 to 31.

(2) In calculating the amount of duty of excise payable on any one consignment any fractions of an anna shall be rounded off to the nearest anna.

25. **Declaration by consignor.**—All consignments of coke from collieries tendered for despatch by rail, shall be accompanied by a declaration advice note in which the consignor or his agent shall describe the consignment as either "soft coke" or "hard coke", according to the nature of the consignment.

26. **Weight for charge.**—For the purpose of the levy of the excise duties, the actual weight of a consignment rounded off to the nearset ton shall be taken into account.

27. **Remittance of excise duty.**—The total amount of excise duty collected by each Railway administration less—

(a) refunds and the amounts written off authorised by the Railway administration under sub-rule (1) of rule 28.

(b) a deduction of such percentage, as the Central Government may, by notification in the official Gazette, fix towards the cost of collection.

shall under advice to the Accountant General, West Bengal and the Chairman, Coal Board be remitted quarterly to the Reserve Bank of India at Calcutta for the credit of the Central Government in a special account.

28. **Refunds and Recoveries.**—(1) Where the amount of the excise duty due under these rules has not been collected either wholly or in part or where the amount collected is in excess of the amount due, the Railway administratic shall deal with he undercharge or overcharge, as the case may be, on the sam principles as to undercharges and overcharges in regard to Railwa freight charg

(2) When ved to the satisfaction of the Board or any person authorise in this beha Board, that any coal, on which the duty of excise unde clause (a) s (1) of section 8 had previously been collected, has bee used in the of any coke on which also the duty has been collected the Board c uthorised in this behalf by the Board may order refun of an amou duty collected on such coal to the person from whon such duty

...) A similar refund on the conditions mentioned in sub-rule (2) may be ...d in respect of the duty of excise collected on raw coal during its transport a washery in cases where duty of excise is again collected on the washed al despatched from the washery to the consuming centres:

Provided that—

(i) no claim for such refund shall be entertained unless it is preferred within one year from the end of the quarter to which the claim relates; and

(ii) refunds under this sub-rule shall be allowed after deductions of such percentage as the Central Government may by general or special order fix as the cost of calculation of such duty.

(4) When it is proved to the satisfaction of the Board or any person authorised in this behalf by the Board that coking coal in respect of which an additional duty of excise has been levied and collected under clause (b) of sub-section (1) of section 8 ... ny person for use in India and

... al is, in the opinion of the Central Government ...elegated to the Board in the opinion of the Board ...ing on any industrial or other process in which ...d; or

...oking coal is made under orders of the Board, ... indented for by such persons:

... person of a sum equivalent to the ...ing coal received and used.

... ocedure for submission of claims for ...(2), (3) and (4).

excise duty on coal/or coke despatched by river and tramway, etc.—(1) Every owner, ...l maintain a register in such form as may ...f quantities of coal, soft coke or hard coke ...ns other than rail. The amount of excise duty ...prescribed under section 8 shall be calculated ...ster itself.

... have been provisionally assessed to an ...-rule (1) as payable during a month ...y, the remittance being creditable to ...nt. The payment shall be made on ... the month for which payment is

... made by means of a challan. ... to the depositor who shall ...y under sub-rule (4) to the

... Chairman such monthly ...tities of coal, soft coke ...an rail, the amount paid ...hall be supported by a ... treasury. The Board ...rn shall be submitted.

... itted so as to reach the ...ng the month for which

...m a colliery under ...he Chairman after ...nts if any, as may ...-rule the Chair- ...xamine the account ... colliery or may re- ...ue Board, the owner to ...esentative the said records ...with the District in which ... officer deputed by the ... at the premises of the ...nder this sub-rule.

(b) if the owner has paid under sub-rule (2) and has submitted under sub-rule (4) the Chairman shall either confirm that the amount of provisionally assessed under sub-rule (2) is final and send an intimation to t effect to the owner concerned or where necessary shall assess the additional amou and issue a notice in the form prescribed by the Board calling upon the own to pay into the treasury by a specified date the further amount in the mann provided in sub-rule (3).

(c) If the owner has not made any payment under sub-rule (2) and has not submitted a return under sub-rule (4) the Chairman shall, after giving the owner a reasonable opportunity of being heard in the manner determined by the Board assess him to such an amount of excise duty as in his opinion is fit and proper and issue a notice in the form determined by the Board calling upon him to pay the full amount into the treasury by a specified date in the manner provided in sub-rule (3).

30. **Recovery of unpaid excise duty.**—(1) Any unpaid after the date specified by the Chairman owner as an arrear of land revenue and shall be ment.

(2) The Chairman shall apply to the Collector colliery is situated for the recovery of the unpaid.

(3) The Collector shall by the 1 the Chairman showing the amount re

31. **Review of assessment of excise duty** application to the Chairman, for a review of (b) and clause (c) of sub-rule (6) of rule receipt of notice of such assessment—

Provided that no such application shall assessed has already been paid in the m

(2) If it is proved to the satisfactio assessed and paid by any owner is in the refund to the owner of such amc

(3) If, on the other hand, th the records in his office and after been made correctly he shall conf Chairman shall be final.

32. **Determination of the** pose of section 11, the net in a financial year s administration collectin close of the financial appoint in this behalf.

(2) In determining th take into account the tot and the amounts writte the year, and the ded Government in accor

(3) The proceed coke or hard coke and certified as officer as may be

(4) The certificates u ment and copies thereof to Board and the certificate u ment and copies thereof to by the officers concerned

CHAPTER VI

POWERS OF THE BOARD: PENALTIES TO BE IMPORTED ETC.

33. **Coal samples for analysis.**—(1) The Board may for determining the grade and type of coal in any coal mine authorise in writing any Techincal Officer of the Board or of the Central Government suitably qualified in this behalf to draw samples of coal for analysis from any seam or section of a seam of the coal mine and the owner, agent or manager, of the coal mine shall afford reasonable facilities to the officer so authorised for the collection of such samples.

(2) Grading will be done in accordance with the specifications prescribed by the Central Government from time to time for the purposes of the Colliery Control Order, 1945.

34. **Duties regarding information and inspection.**—(1) Every owner , agent or manager of a coal mine shall on request promptly furnish to the Board such information and plans as may be required by the Board for any purpose in furtherance of the objects of the Act.

(2) Every owner, agent or manager of a mine shall afford the members of the Board or of any Advisory Committee constituted by the Central Government under section 15 of the Act or any person duly authorised by the Board all reasonable facilities as may be necessary for carrying out the objects of the Act.

35. **Orders for stowing for safety.**—(1) Any order issued by a competent authority under sub-section (3) of section 13 of the Act shall be complied with by the owner, agent or manager of a colliery within the period prescribed therein and failure to do so shall be deemed to be a contravention of this rule.

(2) Before an order is issued by the Board in exercise of the powers delegated to it by the Central Government for stowing for safety under clause (a) of sub-section (2) of section 7 or by an officer duly authorised under sub-section (4) of section 13, a duly qualified Inspecting Officer of the Board shall be deputed to inspect the mine and draw up plans of the areas to be stowed and to submit a report to the Board giving the details of the danger to the mine or neighbouring mines, the period within which stowing should be done, the areas to be stowed, the material to be used, the method of stowing to be adopted and the estimated cost of such stowing.

(3) The report may be referred by the Board to an Advisory Committee constituted under section 15 and the views of the Advisory Committee shall be considered by the Board.

(4) An order for stowing for safety shall detail the measures to be undertaken by the owner, agent or manager of the coal mine and the reasons therefor and the dates within which they should be commenced and completed and shall be accompanied by the plan of the area to be stowed.

36. **Stowing for conservation.**—(1) For the purpose of conservation of coal the Central Government may under sub-section (1) of section 7 issue or cause to be issued an order in writing requiring the owner, agent or manager of any coal mine to undertake stowing in such manner and within such period as may be prescribed in the order.

(2) The Central Government shall require an Inspecting Officer or Inspecting Officers to submit a report in regard to the colliery or collieries where, if stowing for conservation is not adopted, there will be a loss of coal which should be avoided in the public interest by the adoption of stowing.

(3) The Central Government may call for and consider the opinion of an Advisory Committee constituted under section 15 of the Act in regard to the necessity for stowing for conservation in any coal mine or mines.

(4) On consideration of the report of the Advisory Committee the Central Government shall from time to time determine the grade or grades, if any of coal other than coking coal or coal which on beneficiation is likely to yield coking coal or coal suitable for blending which are required to be conserved and the colliery or collieries which should carry out stowing operations to ensure the maximum percentage of extraction of coal.

(5) An order for stowing for conservation shall detail the measures to be undertaken by the owner, agent or manager and the reasons therefor and the dates within which they should be commenced and shall be accompanied by a plan of the area to be stowed.

37. **Washing for conservation.**—(1) Before the issue of an order requiring the owner, agent or manager of a colliery to take steps to beneficiate the coal produced from the colliery, the Central Government shall consider the washability characteristics of the coal, adequacy of transport facilities, the cost of washing, the disposal of middlings and such other matters as will make coal washing economically feasible.

(2) The views of an Advisory Committee consulted under section 15 of the Act may be called for and considered before the issue of an order specified in sub-rule (1).

(3) If the coal washery is to be installed by the owner, agent or manager of the mine specified in the order, the capacity of the washing plant to be installed, the grade or grades of coals that are required to be washed, the specified standard of the washed product and the nature and extent of the assistance that may be given by the Board shall be specified in the order.

(4) In such circumstances as may be considered expedient or appropriate, the owner, agent or manager of a colliery may by order in writing be required to get his coal washed at any central washery.

38. **Other measures for conservation.**—(1) The Central Government may by order in writing, served on the owner, agent or manager of a coal mine specify the maximum quantity of coal of any grade or grades that shall be produced during a specified period in accordance with any policy of coal conservation as may be determined by the Board.

(2) The Central Government may by order in writing, served on the owner, agent or manager of coal mine require the method of working in any Coal Mine or seams to be modified in such manner as it deems necessary for the purpose of ensuring the conservation of coal.

(3) The Central Government may by order in writing served on the owner, agent or manager or a colliery prohibit the carrying out of depillaring operations in the colliery or a seam without stowing or the splitting of pillars as a final mining operation in a colliery or a seam or any other operations connected with mining, which in the opinion of the Central Government may result in undue loss of coal, spread of fire or flooding.

(4) The owner, agent or manager of a coal mine shall give notice in writing to the Board of his intention to depillar in any coal seam or of his intention to split pillars in any seam as a final operation in mining and such notice shall be given at least one full month before the date of commencement of such mining operations provided that no notice need be given where the depillaring is carried out with the aid of stowing.

(5) The Central Government may issue such directions as it deems fit restricting the supply of coking coal of any grade or grades or qualities to specified consumers in accordance with any policy of coal conservation as may be determined by the Board.

(6) The Central Government may by order in writing require the owner of any steel works, blast furnace or coke oven, using coking coal to undertake blending for conservation of coal in accordance with such procedure as may be determined by it from time to time.

39. **Opening and reopening of Coal Mines.**—(1) No coal mine or seam shall be opened and no coal mine or seam the working whereof has been discontinued for a period exceeding six months shall be reopened and no operation shall be commenced without the prior permission in writing of the Board and except in accordance with such directions as the Board may give.

(2) When the coal produced in any coal mine or seam has not been graded, the Board shall when granting permission under sub-rule (1) require the owner to apply for a certificate of the grade or grades of coal produced in each seam of the coal mine. The owner shall accordingly submit an application in the manner prescribed by the Board.

(3) The Board shall grant a provisional grade on the basis of the seam sample. When the coal is allowed to be despatched on the basis of the provisional grade the Board shall have power to draw wagon samples in the presence of a representative of the colliery to determine the quality of the coal

pertaining to the seam or seams. On the basis of the wagon sample drawn on at least three different days the final grade of the seam or seams of the particular colliery will be fixed by the Board.

(4) No coal shall be despatched from a coal mine without getting certificate of grade under sub-rule (3) indicating the grade or grades of coal to be produced and despatched and no two grades of coal shall be mixed before despatch without the prior permission in writing of the Board.

(5) In the case of any coal mine producing more than one grade of coal, the owner, agent or manager shall make such arrangements as may be required by the Board to ensure that different grades of coal are not mixed before despatch

40 **Closing of Coal producing coking coal.**—Save where a coal mine is abandoned or closed owing to unforeseen or uncontrollable natural causes such as fire or flood, the owner of the coal mine shall give notice in writing of his intention to close the mine, or any seam containing coking coal, to the Chairman, Coal Board, not less than three months before the date on which it is proposed to close the mine or the seam stating briefly the reasons for the intended closure.

(2) Within 15 days of the receipt of the notice referred to in sub-rule (1), the Chairman, Coal Board, may intimate the owner of the colliery of the intention of the Board to examine the case in the interest of conservation of coking coal.

(3) A coal mine or seam in respect of which an intimation under sub-rule (2) is given to the owner, shall not be closed and mining operations shall not be stopped except with the written permission of the Board.

41. **Acquisition of lands and surface rights.**—For the due furtherance of the objects of the Act, the Board may acquire any lands or other surface rights or the right to remove sand from river beds and may dispose of surplus lands or surface rights or the rights to remove sand from river beds in its possession in accordance with rules to be framed by the Board with the approval of the Central Government or subject to such directions as may be given by the Central Government.

42. **Construction of ropeways and other structures.**—(1) The Board may construct or cause to be constructed ropeways and such other works or structures as may from time to time be required.

(2) Before any owner, agent or manager of a coal mine construct a ropeway or other works (or structures) for excavating, loading, unloading or conveying of sand or other material for stowing in coal mines and obtains lease of a site to take sand from a river, he shall seek the approval of the Board to the scheme for which the installation or the lease, as the case may be, is considered necessary and such approval shall not ordinarily be withheld unless the scheme is likely to interfere with arrangements for the supply of sand or other stowing material to other coal mines or for other reasons which are to be recorded in writing.

(3) Before any owner, agent or manager of a coal mine instals any stowing plant not referred to in sub-rule (2) or washing plant he shall seek the prior approval of the Board for such an installation.

43. **Appeal to the Central Government.**—If the owner, agent or manager of a coal mine has any objection to any order issued by the Board under rules 35, 36, 37, 38, sub-rule (3) of rule 39, 40, 41 sub-rules (2) (3) of rule 42 or rule 44 may, within 30 days of receipt of the order appeal against the same to the Central Government which may confirm, modify or cancel the order, as it deems necessary. A copy of such appeal shall be forwarded by such owner, agent or manager to the Coal Board:

Provided that on receipt of notice of appeal from the owner, agent or manager of a coal mine the operation of orders under rules, 35, 36, 37 or 38 shall be suspended, pending the decision of the Central Government save and except in such case where compliance with such order is considered by the Board to be urgent.

44. **Power of the Central Government to recover cost.**—The Central Government or with the approval of the Central Government the Board may recover from the owner, agent or manager of a colliery either wholly or partially the cost

of such measures or operations as are undertaken under section 6 if it is satisfied on consideration of all facts and circumstances that such recovery of cost is justified.

45. Supply of copies of Orders.—(1) A copy of every order issued by the Board under rules 35, 36, 37, 38 and 39 shall be forwarded to the Chief Inspector and the Coal Commissioner.

(2) A copy of every application received under sub-rule (1) of Rule 39 shall be sent to the Chief Inspector and the Coal Commissioner.

(3) A copy of every order issued by the Chief Inspector or an Inspector under sub-section (3) of section 13 shall be forwarded forthwith by such Chief Inspector or Inspector to the Board.

46. Secrecy of Information obtained.—(1) All copies of, and extracts from registers, plans and other records appertaining to any mine and all other information acquired by a member of any Advisory Committee constituted under section 15 of the Act or by any person referred to in sub-rule (2) of Rule 34 shall be regarded as confidential and shall not be disclosed to any person or authority unless the Chairman of the Board considers disclosure necessary to ensure safety or the conservation of coal.

(2) Nothing in sub-rule (1) shall apply to disclosure of such information (if so required) to:—

(a) any Court;

(b) a Mining Board, Committee or Court of enquiry constituted or appointed under section 12, section 13 or section 24 of the Mines Act, 1952, as the case may be.

(3) If any person referred to in sub-rule (1) discloses, contrary to the provisions of this rule any such information as aforesaid without the consent of the Central Government or the Chairman, Coal Board, he shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

(4) No court shall take cognizance of any offence under the rule except with the previous sanction of the Central Government.

47. Penalty for contraventions of the rules.—(1) Any contravention of these rules shall be punishable with imprisonment which may extend to three months or fine or both.

(2) No prosecution shall be instituted against any owner, agent or manager of a coal mine for any offence under these rules except with the sanction of the Board and at the instance of the Chairman of the Board.

48. Execution of protective measures directly by the Board.—(1) The Board may prescribe the procedure to be followed for the submission of reports by the Inspecting Officer of the Board or the Chief Inspector of Mines and the examination of cases where it is necessary or expedient for the Board to undertake any protective measures under section 6.

(2) The Board, may for reasons to be recorded in writing sanction the payment from the Fund of the full cost of any protective measures undertaken under section (6) provided that:—

(i) subject to the provisions of clause (ii) of this proviso the Board shall not undertake any such protective measures without the previous sanction of the Central Government, if the estimated cost of such measures exceeds rupees one lakh.

(ii) in the case of protective works of an emergent nature which brook no delay and are estimated to cost more than Rs. 1 lakh but not more than Rs. 5 lakhs the Board may commence the work and simultaneously apply for sanction. The actual expenditure should not in any case exceed Rs. 1 lakh until Government sanction is obtained.

CHAPTER VII

PROCEDURE FOR THE GRANT OF ASSISTANCE

49. **Purposes for which assistance may be granted.**—(1) The Board may grant assistance from the Funds to any owner, agent or manager of coal mine:—

(a) for stowing or other protective measures which are required to be undertaken by an order issued under sub-section (3) of section 13 or sub-rule (2) of rule 35:

(b) for any measures which in the opinion of the Board are essential for the effective prevention of the spread of fire to or the innundation by water of any coal mine from an area adjacent to it;

(c) for stowing for conservation of coal or washing coal which is required to be undertaken by an order under rule 36 or 37.

(d) for the following measures voluntarily undertaken by the owner, agent or manager of the coal mine:

(i) stowing operations in the interests of safety or conservation of coal,

(ii) any process of washing or cleaning coal which reduces its ash content and also improves its qualities or,

(iii) any other measures for safety in coal mines or for conservation of coal,

(e) for any other measures undertaken by the owner, agent or manager of a coal mine under the order of the Board to ensure conservation of coal.

(2) The Board may grant assistance to owner of any steel work, blast furnace or coke plant for blending of coal undertaken under the orders of the Board.

50. **Application for assistance.**—(1) The Board may determine the form in which applications for assistance are to be made, the documents and the particulars which are to accompany such applications and the dates by which the applications shall be submitted.

(2) Every owner, agent or manager who requires assistance from the Fund during any financial year shall apply for such assistance in conformity with the procedure determined by the Board under sub-rule (1).

51. **Priority among applications for assistance.**—(1) Priority among applications under rule 49 shall be determined by the Board according to the degree of urgency of the proposed operations from the point of view of safety and of conservation.

(2) (a) Before determining priority among applications for assistance for stowing operations voluntarily undertaken for safety, the Board shall call for and consider the opinion of the Chief Inspector or of an Advisory Committee as may be expedient.

(b) The Board may call for and consider the opinion of any Advisory Committee constituted under section 15 of the Act before determining priority under sub-rule (1).

52. **Form of assistance.**—The Board may grant assistance from the Fund, at its discretion in each case in one or more of the following ways:—

(i) by the grant of stowing materials;

(ii) by the loan of stowing plant or such other plant as the Board may decide;

(iii) by making monetary grants towards the expenses involved in carrying out the measures for which assistance is granted;

(iv) by the grant of loan for meeting either wholly or in part expenses on the purchase and installation of stowing plant in coal mines blending plant or washing plant or any other plant for the beneficiation of coal.

53. **Quantum of assistance.**—(1) Assistance from the Fund shall be granted by the Board with due regard to the circumstances of each case and the Board may fix from time to time with the approval of the Central Government the maximum rate or amount of assistance to be granted for any measure or measures for safety or conservation of coal provided that quantum of assistance for stowing for conservation undertaken under clause (c) and (d) of sub-rule (1) of rule 49 shall not exceed the assistance granted for stowing undertaken voluntarily in the interests of safety in coal mines.

(2) Where assistance is granted in the form of a monetary grant it shall be based on the expenditure involved (including the cost of depreciation of any plant in use) as assessed by the Board for the execution of the measures for which the assistance is granted.

(3) A loan for the purchase and installation of plant shall take the form of direct payment or guarantee of payment, unto the limit of the loan sanctioned of the bills as the Board may consider necessary.

54. **Conditions attaching to the grant of assistance.**—Before granting assistance under these Rules, the Board shall require the owner, agent or manager of the mine to whom assistance is proposed to be granted to execute a bond with or without surety for the fulfilment of such conditions as may be imposed by the Board.

55. **Conditions attaching to the grant of loans.**—(1) The Central Government shall from time to time fix the rates of interest to be charged on loans granted by the Board for the purchase and installation of stowing plant, blending plant, washing plant, or any other beneficiation plant.

(2) Every such loan shall—

(a) bear interest until repayment at the rate fixed under sub-rule (1) and in force at the time of granting the loans and

(b) shall be repayable within such time as the Board may in each case determine.

(3) The Board shall, before granting any loan, take proper security for its repayment.

56. **Research.**—(1) The Board may grant assistance from the Fund for the prosecution by any agency of such types of research work connected with safety in coal mines or conservation and utilisation of coal as may be authorised by the Central Government.

(2) The Board may also arrange for the prosecution of research work under its own supervision.

CHAPTER VIII

ACCOUNTS AND AUDIT

57. **Deposit of money.**—The sum of money received under section 11 and any other moneys received by or on behalf of the Board shall be deposited to the credit of the Coal Mines Safety and Conservation Fund in the manner provided in rule 58.

58. **Keeping of accounts in banks.**—(1) The current account or accounts of the Board shall be kept in such Banks as may be approved by the Central Government and all moneys at the disposal of the Board with the exception of petty cash and of moneys placed in fixed deposit or invested in accordance with the provisions hereinafter contained shall be paid into those accounts.

(2) Any funds not required for current expenditure may be placed in fixed deposit with any bank approved in this behalf by the Central Government or invested in the name of the Board in any security in which trust property may lawfully be invested under the Indian Trusts Act, 1882 (II of 1882).

(3) The placing of money in fixed deposit and the investment thereof and disposal of moneys so placed or invested shall be subject to the sanction of the Board.

(4) Payments by or on behalf of the Board shall be made in cash or by cheques drawn against a current account of the Board.

(5) The cheque referred to in sub-rule (4) and all orders for the making of deposits or investments or for the withdrawal of such deposits or the realisation of such investments or for the disposal in any other manner of the funds of the Board shall be signed by the Secretary to the Board or an officer duly authorised in this behalf by the Board and countersigned by the Chairman or by a member authorised by the Board in this behalf.

59. **Budget.**—(1) The Board shall in each year prepare a budget for the ensuing financial year and shall submit it for the sanction of the Central Government on or before the 1st November.

(2) The Budget shall include statements of:—

(i) the estimated opening balance;

(ii) the estimated receipts under section 11 and from other sources and

(iii) the proposed expenditure classified under the heads specified in sub-rule (3) of rule 61 and such other heads as may be settled at a meeting of the Board.

60. **Keeping auditing and publication of accounts.**—(1) The Board shall keep accounts of all moneys received in and expended out of the Fund during each financial year.

(2) Such accounts shall be examined and audited as prescribed in sub-section (2) of Section 12 of the Act.

(3) The Comptroller and Auditor General may disallow any item which has in his opinion been expended out of the Fund otherwise than as directed by or under the Act or these rules.

(4) If an item of expenditure is disallowed by the Comptroller and Auditor General the Central Government may;

(a) either remit the disallowance made by the Auditors; or

(b) sanction the expenditure; or

(c) direct that the amount be recovered from the person or persons responsible for the expenditure and credited to the fund, provided that no recovery under the sub-clause shall be permissible if the expenditure has been incurred in good faith; or

(d) direct that the item disallowed shall be dealt with in such other way as the Central Government may think fit.

(5) The audited statement of receipts and expenditure together with the annual report referred to in clause (3) of sub-rule (2) of rule 13 shall be submitted to the Central Government not later than the 31st day of July in each year.

(6) An abstract statement of the accounts together with the Auditor's report thereon shall be published annually in the official Gazette.

61. **Receipts and Expenditure.**—(1) The accounts of receipts shall be shown under the following heads:—

(a) a sum received under section 11;

(b) any other moneys received;

(c) any interest that may have accrued from the investment of such sum or moneys as aforesaid.

2. Total receipts only shall be shown under each of the heads specified in sub-rule (1) and the opening balance, if any, shall also be stated.

(3) Accounts of expenditure shall be shown under the following heads:—

(a) administration of the Board;

(b) other expenditure connected with the administration of the Act;

(c) grant of stowing materials or other assistance for stowing operations to owners, agents or managers of coal mines;

(d) other measures taken in connection with furtherance of the objects of the Act;

(e) miscellaneous.

(4) The closing balance of the year shall be shown at the foot of the accounts on the expenditure side.

(5) In addition to the particulars required by sub-rule (3) separate statements under heads (c) and (d) referred to in that sub-rule shall be drawn up, which shall show the sums paid to each owner, agent or manager of a coal mine independently or spent otherwise.

[No. 24-CI(6)/52.]

A. NANU, Dy. Secy.

MINISTRY OF LABOUR

New Delhi, the 23rd September 1954

S.R.O. 3147.—In exercise of the powers conferred by sub-section (3) of section 22 of the Industrial Disputes Act, 1947 (XIV of 1947), as extended to Chandernagore, the Central Government hereby specifies that each of the undermentioned officers shall in respect of Chandernagore be the authority to whom intimation by the employer of any lock-out or strike referred to in the said section shall be sent:—

(1) The Conciliation Officer (Central), Calcutta I.

(2) The Conciliation Officer (Central), Calcutta II.

[No. LR.1(10)/54.]

S.R.O. 3148.—In exercise of the powers conferred by section 4 of the Industrial Disputes Act, 1947 (XIV of 1947), as extended to Chandernagore, the Central Government hereby appoints the following officers as conciliation officers in respect of all industrial disputes in Chandernagore:—

1. Chief Labour Commissioner (Central).
2. Regional Labour Commissioner (Central), Calcutta.
3. Conciliation Officer (Central), Calcutta I.
4. Conciliation Officer (Central), Calcutta II.

[No. LR.1(10)/54.]

S.R.O. 3149.—In pursuance of clauses (a) and (c) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), as extended to Chandernagore, the Central Government hereby appoints

(i) the Chief Labour Commissioner (Central) to exercise the functions of an appellate authority under the said Act in respect of all industrial establishments in Chandernagore to which the said Act applies; and

(ii) the Regional Labour Commissioner (Central), Calcutta, to exercise the functions of a Certifying Officer under the said Act in respect of the aforesaid industrial establishments.

[No. LR.1 (10)/54/II.]

S.R.O. 3150.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Muktipada Basu and others, workmen of the Railway Collieries.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION NO. 371 OF 1953

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of the Industrial Disputes Act.

PRESENT

Shri L. P. Dave, B.A., L.L.B.—*Chairman.*

PARTIES.

Shri Muktipada Basu & Others, c/o Dr. Prakriti Bhusan Gupta, P.O. Giridih, Dist. Hazaribagh.—*Complainants.*

Vs.

Chief Mining Engineer, Railway Board, 1, Council House Street, Calcutta.—*Opposite party.*

APPEARANCES

Dr. Prakriti Bhusan Gupta, General Secretary, Hazaribagh District Coal Mazdoor Union, Giridih, Dist. Hazaribagh.—*For the complainants.*

Shri D. R. Bagroy, Superintendent of Collieries, Girdidih, Dist. Hazaribagh.—*For the opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainants alleged that the opposite party is realising house rent from the employees appointed on and after 1st June 1944; that the house rents were not realised before the proceedings under Reference No. 6 of 1952; that there was no such condition laid down at the time of their appointment; and that no rent was charged from employees working in the coal industry. The complainants urged that the opposite party had thus committed a breach of Section 33 of the Industrial Disputes Act, during the pendency of Reference No. 6 of 1952 and filed the present complaint for passing such orders as may be deemed fit and proper.

3. The opposite party urged *inter alia* that the staff appointed before 1st June 1944 were governed by the Railway Rules and were entitled to free quarters and free supply of electricity in terms of the Indian Government Railway Engineering Code, Chapter XIX, Paras. 1904 (i) & (ii). The railway collieries were taken over by the late Ministry of Industry and Supply (now the Ministry of Production) from the Ministry of Railways on and from 1st June 1944. Consequently all staff appointed in the railway collieries on and from that date were governed by Civil Service Rules and were not entitled to free quarters or free supply of electricity. There was no such agreement stipulated in their service records that they would be entitled to these concessions. Instructions were issued to all collieries for recovery of house rent, electric charges, etc. according to orders received from the Ministry dated 28th February 1952. On receipt of representations from the members of the staff against the above orders a request was made by the opposite party to the Ministry to reconsider the case and to issue revised orders. After prolonged correspondence, the Ministry decided that the original decision already communicated could not be altered. It was further contended that non-enforcement of terms of conditions of service or allowing some concessions for some time would not create any new condition of service in favour of the complainants or other workmen. It was urged that the complaint should be dismissed.

4. The complainants are workmen employed in the different collieries belonging to the State Railways. They filed the present complaint alleging that the opposite party has changed their conditions of service during the pendency of Reference No. 6 of 1952 without obtaining the permission of this Tribunal by recovering house rent from them. It was further urged that no house rent was formerly being recovered from them at the time of the commencement of proceedings in Reference No. 6 of 1952 and hence when the opposite party began to collect rent during the pendency of Refernce No. 6 of 1952, it amounted to a breach of Section 33.

5. It is not in dispute that the opposite party is now collecting rent from its employees, who were employed on and after 1st June 1944. No rent is being collected from employees who were appointed prior to this date. The opposite party contends that it has a right to recover rent from persons employed after 1st June 1944. In this connection, it is an admitted fact that till 1st June 1944, the railway collieries were under the Ministry of Railways. But from that day, they were taken over by the then Ministry of Industry and Supply (now the Ministry of Production).

6. The opposite party's contention is that persons employed in the State Railway collieries prior to 1st June 1944 were governed by Railway Code. The people who were employed on and after 1st June 1944 would be governed by Civil Service Rules. It was not disputed before me that a person governed by Civil Service Rules is not entitled to free quarters and would have to pay rent for Government quarters supplied to him. This would mean that persons employed in State Railway collieries after 1st June 1944 would be liable to pay rent (for quarters supplied to them), as they would be governed by the Civil Service Rules, and not by the Railway Code.

7. It was however argued by Dr. Gupta that rent was never recovered from any of the complainants or from any of the employees of the State Railway collieries and that rent began to be recovered only recently during the pendency of Reference No. 6 of 1952, and that this amounted to a change of service conditions. Section 33 of the Industrial Disputes Act provides *inter alia* that during pendency of proceedings before a Tribunal, no employer shall alter to the prejice of the workmen concerned in such dispute the conditions of service applicato them immediately before the commencement of such proceedings. It was from this that as no rent was recovered from the complainants immediately he commencement of the proceedings in Reference No. 6 of 1952, it would

amount to a breach of this section if rent began to be recovered from them during the pendency of Reference No. 6 of 1952. I am unable to accept this contention. The complainants, who were admittedly appointed after 1st June, 1944, were governed by the Civil Service Rules and not by the Railway Code. The complainants have alleged that rent is being recovered from persons appointed on and after 1st June, 1944. That is, no rent is being recovered from persons appointed prior to that date. In case of employees appointed on and after 1st June, 1944, they were, as I said above, governed by the Civil Service Rules and not by the Railway Code. That being so, it was not a condition of their service that they would be entitled to free quarters. In other words, they would be liable to pay rent for Government quarters if supplied to them.

8. It is true that no rent appears to have been recovered from them till recently, *i.e.* no rent was recovered from them immediately before the commencement of proceeding in Reference No. 6 of 1952. Section 33 however requires that the condition of service *applicable* to the employees immediately before the commencement of the proceedings should not be altered, and not that conditions of service *prevailing* at that time should not be altered. What condition was prevailing at the time of the proceedings in Reference No. 6 of 1952 is immaterial. The question is as to what were the conditions of service *applicable* to the complainants at that time. Persons governed by the Civil Service Rules are not entitled to free quarters and were liable to pay rent and this would be the condition of service which was applicable to them at that time. For one reason or another no rent may have been recovered from them at that time; but it could not be said that it was a condition of service applicable to them that they were entitled to free quarters. That being so, it cannot be said that the opposite party has altered the condition of service applicable to the complainants immediately before the commencement of proceedings in Reference No. 6 of 1952. In other words, the opposite party has not committed a breach of Section 33 of the Industrial Disputes Act.

9. It was urged on behalf of the complainants that no rent was charged from employees working in the coal industry, and hence no rent should be charged from the complainants. This question does not arise in a complaint under Section 33A of the Industrial Disputes Act. The scope of enquiry of a complaint under Section 33A is limited. I can only see whether a breach of Section 33 has been committed by alteration of service conditions. If no such breach has been made, the complaint would fail. In these proceedings, I cannot enter into the question as to whether the employees of the State Railway Collieries should be given the benefit of free quarters or not. In this connection, I may also mention that this is one of the points which has been referred to the All India Industrial Tribunal (Colliery Dispute) and will be decided by that Tribunal.

10. On the whole, I held that the complaint fails and must be dismissed.

I pass my award accordingly.

The 8th September, 1954.

(Sd.) L. P. DAVE, *Chairman*,
Central Government's Industrial Tribunal, Dhanbad.

[No. LR-2(365)/IV.]

S.R.O. 3151.—In pursuance of section 17 of the Industrial Disputes Act 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Rampat, a workman of the Kotma Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 21 OF 1954

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of the Industrial Disputes Act 1947.

PRESENT

Shri L. P. Dave, B.A., LL.B.,—*Chairman.*

PARTIES

Rampat S/o Ram Gopal, Chowkidar of Associated Cement Companies Ltd., Kotma Colliery, P. O. Kotma, Dist. Shahdol. Vindhya Pradesh—*Complainant.*

Vs.

The management of the Associated Cement Companies Limited, Kotma Colliery, P. O. Kotma, Distt. Shahdol—*Opposite party.*

APPEARANCES

Shri N. K. Mhaskar, Officer of Kamgar Samity Kotma Colliery, P. O. Kotma, Distt. Shahdol, Vindhya Pradesh—*For the complainants.*

Shri R. H. Ranga Rao, Senior Personnel Officer, Associated Cement Companies Limited., Bombay—*For the opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleged that during the pendency of Reference No. 6 of 1952, the opposite party wrongfully suspended and expelled him on 3rd August 1953 without any charge sheet and without obtaining the permission of this Tribunal. The Union made a representation to the Regional Labour Commissioner in this connection on 9th September 1953; but nothing came out of it. He has therefore filed the present complaint.

3. The opposite party contended that the complaint was not maintainable. There was no dispute, much less an industrial dispute, between the opposite party and their workmen. The complainant was working as a Night Chowkidar. On the night of 2nd September 1953, the Manager's bungalow night guard heard some cries and went out and found that the complainant and another person were assaulting a night chowkidar Sursari Prasad. As the manager was out of station, the Office Superintendent held a preliminary enquiry on 3rd September 1953 and suspended the complainant, pending a full enquiry of the complainant by the manager on his return. On his return, the manager went further into the matter and was satisfied that there was a *prima facie* case against the complainant and wanted to issue a charge sheet to him. The complainant however requested that he should not be charge sheeted or dismissed, but should be allowed to resign. He however left the colliery without submitting his resignation. The opposite party denied that the complainant had been expelled and urged that the present complaint should be dismissed.

4. The preliminary objections were raised by Mr. Ranga Rao on behalf of the opposite party. The first was that there was no dispute, much less an industrial dispute, between the opposite party and their workmen regarding giving of paid holidays on the Independence Day and the Republic Day and that the Order of Reference in Reference No. 6 of 1952 was bad at least so far as the opposite party was concerned. This point was raised by the opposite party in some other complaints (under Section 33A) filed against them by some other employees. I have considered this point in my awards in applications Nos. 26 of 1954 and 64 of 1954 and come to the conclusion that this contention cannot be accepted. For the same reasons as mentioned in these cases, I hold that this contention cannot be accepted.

5. The second preliminary objection raised by Mr. Ranga Rao on behalf of the opposite party was that the present complaint has been filed after an unreasonable delay, and should be dismissed on that ground. As held in the case of General Motors (India) Ltd., 1954, Vol. I, L.L.J., p. 676, a complaint under Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (which correspondent to Section 33A of the Industrial Disputes Act) must as far as possible be filed during the pendency of proceedings before a Tribunal and if it had not been filed during the pendency of these proceedings, it should be filed within a reasonable time.

6. The award in Reference No. 6 of 1952 was published in the *Gazette of India* on 10th October 1953 and hence under Section 20(3) read with Section 17A of the Industrial Disputes Act, the proceedings in the above reference must be deemed to have concluded from 10th November 1953. The complainant's case is that he was suspended from 3rd August 1953. The present complaint has been filed on 26th February 1954. In other words, the complaint is filed 3½ months after the proceedings in Reference No. 6 of 1952 had concluded and more than six months after his suspension and dismissal. On the face of it, there has been unreasonable delay in filing the complaint.

7. The complainant has alleged that the Labour Union had made a representation to the Regional Labour Commissioner and as nothing came out of it, the present complaint was filed. If a person wants to file a complaint under

Section 33A of the Industrial Disputes Act, he should not take other steps. After all, the Regional Labour Commissioner's powers were merely recommendatory. Further, the complainant should not have waited for an unduly long time when he found that nothing came out of the application made to the Regional Labour Commissioner. In my opinion, the complaint has been filed after an unreasonable delay and must be dismissed.

8. Coming to the merits of the case, the case of the complainant is that he was falsely charged with having assaulted one Sursari Prasad and was suspended and later on summarily dismissed without a charge sheet or enquiry. The management's case is that the complainant had assaulted one Sursari Prasad because he found him asleep on duty and that in the course of the preliminary enquiry held by the Manager, the complainant admitted his guilt. The manager thereupon wanted to issue a charge sheet to the complainant but the complainant requested that he should be allowed to resign; because if he was charge sheeted and dismissed, he would not get a job elsewhere. The complainant has examined himself (Exhibit 10) and one Ramsia (Exhibit 11) in support of his case. On the other hand, the management have examined the manager (Exhibit 13), Sursari Prasad (Exhibit 12), the Office Superintendent (Exhibit 14), a watchman Yam Bahadur (Exhibit 15) and the Dafi-in-Charge (Exhibit 16), in support of their case.

9. It is true that the management did not issue a charge sheet to the complainant nor did they hold any formal inquiry. According to them, they have not dismissed the complainant; but the complainant left the colliery of his own accord, when he found that he was to be charge sheeted and would be dismissed. Even then, I think that the management, when they found that the complainant had gone way without tendering a resignation as promised by him, should have issued a charge sheet to him and sent it to him by registered post. This however has not been done probably because officers concerned were ignorant of the proper procedure to be followed in such cases. Admittedly the complainant was suspended on 3rd September 1953 by the Office Superintendent; this suspension was oral and not in writing. This is admitted by both sides. This shows that the officers of the management were not aware of the proper procedure to be followed in such a case.

10. Even if an employee is dismissed without issuing a charge sheet and without holding an enquiry, it would not *ipso facto* entitle the employee to be reinstated. It would only mean that the Tribunal could go into the merits of the case and decide whether the complainant's guilt was proved or not. In the present case, the management have produced sufficient evidence to show that the complainant was guilty of an offence of assaulting another watchman. From the evidence, I am also satisfied that the complainant was not dismissed as alleged by him, but left the colliery of his own accord.

11. That some incident took place on the night of 2nd September 1953 and 3rd September 1953 between the complainant and one Sursari Prasad is not in dispute. There is however a difference as to what were the incidents which actually happened. According to the complainant, he went to answer the call of nature after asking Sursari Prasad to keep a watch in his place and when he (the complainant) returned after a few minutes, he found that Sursari Prasad had left, taking the complainant's lantern with him. He thereupon pursued him and asked him to return the lantern, to which Sursari Prasad said that the complainant was found asleep, and that the complainant wanted to assault him. There was no reason why Sursari Prasad should have made these false allegations that very night. He immediately went and complained to the Dafi-in-Charge about the complainant's conduct that very night. Information was also given to the office Superintendent immediately. This conduct of Sursari Prasad corroborates his allegation that he had found the complainant asleep and also that the complainant had tried to assault him.

12. It is true that there has been some exaggeration in the allegations made by Sursari Prasad. It has been alleged that he had been seriously assaulted and was profusely bleeding. There is no reliable evidence in support of this allegation. Such exaggerations are not uncommon among people of this type; but by itself, the exaggeration would not mean that the entire story is false. I might repeat that on that very night. Sursari Prasad had made the allegations that the complainant was found asleep and the complainant had tried to assault him, not only to the officers of the company but to the complainant himself. There was no reason why Sursari Prasad should have made such false allegations that very night.

13. Sursari Prasad's evidence on this point has also been corroborated by the evidence of another witness named Yam Bahadur (Exhibit 15) who was on duty that night at the manager's bungalow. There is no reason to disbelieve him.

The evidence of the Dafi in charge (Exhibit 16) and the office Superintendent (Exhibit 14) also supports the evidence of the complainant.

14. We have then the evidence of the manager (Exhibit 13). He was not in headquarters on that night but he returned after 3 or 4 days and learnt about the incident. He then called Sursari Prasad, the complainant, and others and questioned them. He has stated that the complainant admitted before him that he had assaulted Sursari Prasad because the latter had removed his lantern. He has also said that the complainant requested that he should be pardoned and should be allowed to resign. I see no reason to disbelieve the evidence of the Manager.

15. The only reason alleged by the complainant as to why this false allegation was made against him is that he had joined the labour union and that the manager had called him a week before the above incident and threatened him that he would take steps to see that he was dismissed within a week and that this was because he had joined the union. No such allegation has been made in the complaint nor is there any evidence in support of that allegation. It is unbelievable that the manager would threaten the complainant merely because the complainant had joined the union. The matter may have been different if the complainant was taking an active part in the union work; but merely because he joined the union it is not likely that the manager would threaten him with dismissal nor is it likely that merely because of this, the manager would enter into a conspiracy and induce his subordinates to make false allegations against the complainant.

16. The complainant has examined one Ramsia with whom the complainant was then living and he has said that one Ram Swarup went to his quarters and asked the complainant to leave the quarters immediately. Ramsia is obviously an interested witness. He must have had a soft corner for the complainant, as can be seen from the fact that he allowed him to stay with him. Ramsia had also filed a complaint under Section 33A against the management. In the circumstances, his evidence cannot be said to be entirely disinterested. I do not believe him.

17. On the whole, after carefully considering the evidence in the case, I am satisfied that the case of the management against the complainant that he was found asleep on duty by Sursari Prasad, and that he tried to assault Sursari Prasad is true. I am also satisfied that the complainant left the colliery of his own accord when he found that action was likely to be taken against him. In my opinion, this is not a case of dismissal and hence the management have not committed a breach of Section 33 of the Act. Further even if it was a case of dismissal, the action of the management would be justified.

18. On the whole, the complaint fails and is dismissed.

I pass my award accordingly.

The 11th September 1954.

(Sd.) L. P. DAVE, *Chairman*,

Central Government's Industrial Tribunal, Dhanbad.

[No. LR-2(365)/V.]

S.R.O. 3152.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Hiralal, a workman of the Kotma Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 23 OF 1954

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of the Industrial Disputes Act 1947

PRESENT:

Shri L. P. Dave, B.A., LL.B.,—*Chairman*

PARTIES

Hiralal S/o Bhagwandin, Road-gang Cooly, Associated Cement Companies Ltd., Kotma Colliery, P.O. Kotma, Dt. Shahdol—*Complainant.*

Vs.

The management of Associated Cement Cos. Ltd., Kotma Colliery, P.O. Kotma, Dt. Shahdol, Vindhya Pradesh—*Opposite party.*

APPEARANCES

Shri R. L. Malviya, President, Chhatisgarh Colliery Workers Federation, Manendragarh P.O. Dt. Surguja, Madhya Pradesh—*For the complainant.*

Shri R. H. Ranga Rao, Senior Personnel Officer, Associated Cement Companies Limited, Bombay—*For the opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleged that he was discharged by the opposite party on 4th October, 1953 during the pendency of Reference No. 6 of 1952 without the permission of this Tribunal. After his discharge, the labour union made an application to the Conciliation Officer and the Regional Labour Commissioner; but nothing had come out of the same and hence the complainant filed the present complaint.

3. The opposite party contended that the complaint was not maintainable; that there was no dispute, much less an industrial dispute, between the opposite party and their workmen and hence the order of reference of Reference No. 6 of 1952 was bad. They denied that they had discharged the complainant and alleged that the complainant had tendered his resignation on 29th September, 1953 because he wanted to go to his village for cultivating his lands. The resignation was accepted by the management on 30th September, 1953. The complainant worked till 2nd October, 1953 and his wages were paid to him on 4th October, 1953. On 26th October, 1953 the Conciliation Officer forwarded a copy of the letter of the labour union which mentioned *inter alia* "sacking of Hiralal, Road Gang Mate for taking leading part in union work without charge-sheet". The management informed the Conciliation Officer that their records showed that there was no Road Gang Mate named Hiralal. The complainant was a Road Gang Coolie. It was finally urged that the complaint should be dismissed.

4. Two preliminary objections were raised by Mr. Ranga Rao on behalf of the opposite party. The first was that there was no dispute, much less an industrial dispute, between the opposite party and their workmen regarding giving of paid holidays on the Independence Day and the Republic Day and hence the order of Reference in Reference No. 6 of 1952 was bad at least so far as the opposite party was concerned. This point was raised by the opposite party in some other complaints (under Section 33A) filed against them by some other employees. I have considered this point in my awards in applications Nos. 26 of 1954 and 64 of 1954 and come to the conclusion that this contention cannot be accepted. For the same reasons as mentioned in these cases, I hold that this contention cannot be accepted.

5. The second preliminary objection raised by Mr. Ranga Rao on behalf of the opposite party was that the present complaint has been filed after an unreasonable delay and should therefore be dismissed. As held in the case of General Motors (India) Limited, 1954, Vol. I, L.L.J., p. 676, a complaint under Section 33A should ordinarily be filed during the pendency of proceedings before a Tribunal and if it is filed after the pendency of these proceedings, it should be filed within a reasonable time. The award in Reference No. 6 of 1952 was published in the Gazette of India, dated 10th October, 1953 and hence under Section 20(3) read with Section 17A of the Industrial Disputes Act, the proceedings in the above reference must be deemed to have concluded from 10th November, 1953. The present complaint has been filed on 1st March 1954, *i.e.* more than 3½ months after the proceedings in the above reference were concluded. The complainant is alleged to have been dismissed on 3rd October 1953. That would mean that the present complaint has been filed about five months after his dismissal. On the face of it, the delay appears to be unreasonable.

6. It is true that the complainant has alleged in his complaint that the labour union had made an application to the Conciliation Officer and the Regional Labour Commissioner in connection with his dismissal and that though the Conciliation Officer paid two visits to the colliery for holding conciliation proceedings, nothing had happened in the matter and hence he filed the present complaint. The opposite party has stated that the grievance made by the labour union related to the alleged dismissal of Hiralal, a Road Gang Mate and that they had no Road Gang Mate of such name, and they informed the Conciliation Officer accordingly. It appears that a copy of the letter of the management in this connection was sent to the Labour Union who offered their comments sometime in November

1953. There is nothing to show as to whether any conciliation proceedings were held thereafter. There is nothing to show that there was any reasonable ground for the complainant to have not taken any action at least after November 1953 when he learnt that the management denied that they had a road gang mate named Hiralal. In my opinion, therefore, the present complaint is filed after an unreasonable delay and must be dismissed.

7. On merits, the complainant's case is that he had joined a procession organised by the labour Union on 3rd October 1953. On the next day, *i.e.* on 4th October 1953, while he was on his way to attend his duties, he was informed by one Ram Swarup Singh that he should not go to attend his duties as the manager had stated that he was not to be allowed to join his duties. He has further alleged that sometime after this the manager came there and told him that as he had taken part in the procession of the labour union, his services were not required and he should hand over all articles belonging to the colliery and vacate his quarters. He then went to the office of the Union and informed the office bearers about what had happened and they advised him to return the company's articles and to vacate the quarters. Accordingly he handed over all the articles and vacated the quarters. He also accepted his wages that were due to him upto 2nd October, 1953. He however urged that he was not willing to do so; but as he was threatened, that is why he accepted the wages.

8. On the other hand, the management's case is that the complainant had tendered his resignation on 29th September, 1953 and it was accepted by the manager on 30th September, 1953. The letter of the resignation has been produced at Exhibit 10. The complainant has admitted that the signature on this appears to be his, but he said that he was unable to remember as to how he had put the signature thereon. In this connection, I may also mention that the complainant is not sure about his own signatures. For instance, he at first denied that the signature on voucher No. 472 was his; but when it was explained to him that it was for payment of wages due to him, he admitted that the signature was his. It is true that the management have not produced any direct evidence to show that this letter of resignation was signed by the complainant or that he did so voluntarily. But looking to the circumstances in the case, I do not believe the complainant's case that he was dismissed on 4th October, 1953; I believe that he left the colliery in pursuance of a resignation which he had already tendered on 29th September, 1953.

9. We have the evidence of the manager, Exhibit 15, who has said that this letter of resignation came to him along with other papers on 30th September, 1953 and he passed an order on that very day asking the cashier to pay all the dues of the complainant. In other words, not only was this letter given to the manager before 3rd October, 1953 but an order had already been passed by the manager on 30th September, 1953. It is to be remembered that according to the case of the complainant, he was dismissed because he took part in a procession organised by the labour union on 3rd October, 1953. Before that date the management had no grievance against the complainant. There was no reason why a false letter should have been got up on 29th September, 1953 or orders passed on 30th September, 1953 thereon. Though the above letter has not been strictly proved, there can be no doubt that orders had been passed on it three days before the procession on 3rd October, 1953, accepting his resignation.

10. We have then to remember that the complainant admits that he returned all the articles of the company and vacated his quarters soon after 3rd October, 1953. He also admits that he accepted all the wages due to him upto 2nd October, 1953. If he had not tendered his resignation, he would not have done so. According to his case, he had been summarily dismissed on 4th October, 1953 because he took an active part in the procession on 3rd October, 1953. It has been further alleged that he had been assaulted on 4th October, 1953 at the instance of the manager. If this was so, I do not think that he would have voluntarily and willingly returned the articles belonging to the company or vacated the quarters quietly or taken away all his dues nor is it likely that the office bearers of the union would have advised him to do so. This conduct on his part is inconsistent with his allegations but is consistent with the management's case that he had tendered his resignation.

The complainant has examined one Ramsia at Exhibit 11, who has said that manager told Hiralal in his presence to vacate the quarters and when Hiralal said that he should be given notice, the manager called his peon and asked him to beat Hiralal. Hiralal himself has not said anything about the beating by the manager having asked the peon to beat him. Ramsia is not a dis-

He had already been given a notice on 1st October, 1953.

He was subsequently paid up his dues upto 15th October, 1953. He had also filed a complaint before this Tribunal (but later on it was compromised). His statement about dates on which Hiralal was paid up his dues also shows that he cannot be believed. He has said that Hiralal was paid on 5th October, 1953 and that he himself was paid up 4 or 5 days thereafter. The vouchers show that the payments were made to both of them on the same day namely on 8th October, 1953.

12. It may then be noted that there is an important discrepency between the evidence of Hiralal and Ramsia about the place where the above incident took place. Hiralal has said that it was near the petrol godown while Ramsia said that the incident took place near the motor garage which is at a distance of about a furlong from the petrol godown. I may also mention that though the complainant was working as a Road Gang Coolie, Ramsia has stated that he was a Road Gang Mate. On the whole I do not believe the evidence of Ramsia nor of the complainant.

13. It may then be noted that according to Hiralal, several other persons were present when the manager asked him that his services were not required but none of them has been examined. It was argued on his behalf that there was no reason for him to resign because he had no lands and because he had a father and brothers who could look after the lands. He has however admitted that when he had first joined the colliery, he had worked for about three years and then went home and returned after a year; that is, he remained at home for one year. This would go to show that he had some work which required his presence at home and it is not unlikely that he would tender his resignation.

14. It may also be noted that the only reason alleged as to why the complainant was dismissed was that he had taken part in a procession on 3rd October, 1953. Very many people had taken part in that procession and it is nobody's case that all of them were dismissed. There is no reason why the complainant should have been singled out. It is not his allegation that he was taking an active part in trade union activities. It is therefore unlikely that he should have been dismissed merely because he took part in a procession.

15. On the whole, I do not believe the complainant's case that he was dismissed on 4th October, 1953. I believe the opposite party's case that the complainant had tendered his resignation on 29th September, 1953 and left the colliery because his resignation had been accepted by the opposite party. The opposite party has thus not committed a breach of Section 33 of the Industrial Disputes Act. The complaint therefore falls and is dismissed.

I pass my award accordingly.

(Sd.) L. P. DAVE, *Chairman.*

The 10th September, 1954.

Central Govt.'s Industrial Tribunal, Dhanbad.

[No. LR-2(365)/VI.]

S.R.O. 3153.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Sarva Sri Saran Singh and Indradeo Singh, workmen of the Loyabad Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION NO. 4 OF 1954

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of the Industrial Disputes Act 1947

PRESENT

Shri L. P. Dave, B.A., L.L.B.—*Chairman*

PARTIES

1. Saran Singh and 2. Indradeo Singh, Chaprasies, Loyabad Colliery, Loyabad, P.O. Bansjora—*Complainants.*

Vs.

Messrs. Burrakur Coal Co. Ltd., Loyabad Colliery, P.O. Bansjora, Dt. Manbhum, Bihar—*Opposite party.*

APPEARANCES

Shri Lalit Burman, General Secretary, Loyabad Labour Union, P.O. Banjora, Dt. Manbhum—*For the complainants.*

Shri D. N. Gupta, Chief Personnel Officer, Messrs. Bird & Co. Ltd., P.O. Sijua, Dt. Manbhum—*For the opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleged that during the pendency of reference No. 6 of 1952, the opposite party retrenched them from 27th August, 1953 without the permission of this Tribunal. It is also alleged that the ground of retrenchment was not true and that the complainants had reason to believe that it was because they were members of the Loyabad Labour Union, while the management was supporting another union at the colliery, that they were retrenched.

3. The opposite party contended that they had not committed a breach of Section 33 of the Industrial Disputes Act, as they had obtained permission from this Tribunal on 12th May, 1953 for discharging nine workmen including the present complainants, under application No. 48 of 1953. One rice godown of the colliery was closed and that is why the complainants' services were terminated. The allegation that they were discharged because of their union activities is not correct.

4. The complainants were working as chaprasis (watchmen) at rice godown No. 4. They were discharged (retrenched) from service in September 1953 on the ground that they were surplus to the requirements of the management. They have therefore filed the present complaint on 14th January, 1954. The award in Reference No. 6 of 1952 was published in the *Gazette of India*, dated the 10th October, 1953 and hence under Section 20(3) read with Section 17A of the Industrial Disputes Act, the proceedings in that case must be deemed to have concluded from 10th November, 1953. In other words, the present complaint has been filed more than two months after the proceedings had concluded and about four months after the discharge of the complainants from service.

5. Section 33A of the Industrial Disputes Act, which gives a right to an employee who has been aggrieved by the action of the employer in contravening the provisions of Section 33 to make a complaint, does not in express terms lay down the period during which he should make it; but it does not give him a right to make it after an indefinite period. It is implicit in the section that the complaint must be made within a reasonable time of the act complained of. The true position would be that a complaint under this section must be made as far as possible during the pendency of the proceedings and if it is made after such pendency, it should be made within a reasonable time. See the decision of the Labour Appellate Tribunal in the case of General Motors (India) Ltd., 1954, Vol. I, L.L.J., p. 676. It is true that this was a case under Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950; but that section is similar to Section 33A of the Industrial Disputes Act and the principles laid down in the above case would also be applicable to the present case.

6. As I mentioned above, the present complaint has been filed more than two months after the proceedings in Reference No. 6 of 1952 had concluded and about four months after the discharge of the complainants. The delay, in my opinion, is unreasonable. No reason has been alleged to why the complainants did not file a complaint earlier. The complaint is therefore liable to be dismissed on thi ground.

7. Apart from this, the opposite party's case is that they did not commit a breach of Section 33 of the Act because they had obtained permission of this Tribunal for discharging the complainants. It appears that the opposite party filed application No. 48 of 1953 before this Tribunal, requesting permission to discharge ten chaprasis mentioning therein the present two complainants. In that application, it was mentioned that the persons sought to be retrenched were represented by Burrakur Coal Company Mazdoor Sangh, Loyabad Colliery, and a notice was issued to that labour union. The Secretary filed a written statement opposing the application. Later on, when the matter came up for hearing, it was agreed that nine chaprasies should be retrenched. The employer also gave an assurance that these chaprasis would be absorbed at such a time as vacancies

occurred and they would be given the first chance of accepting the same. After this and after hearing the parties, the Tribunal gave permission to the management to discharge nine chaprasis including the present two complainants, as the Tribunal was satisfied that retrenchment was necessary as a result of a temporary department being closed.

8. It was argued on behalf of the complainants that they were not informed of the above application and that the Burrakur Coal Company Mazdoor Sangh had no right to represent them, and hence the permission given by this Tribunal was void. I do not agree with this contention. Section 33 of the Act prohibits an employer from discharging a workman during the pendency of proceedings before a Tribunal without the express permission in writing from the Tribunal and Section 33A would apply only if the employer has committed a breach of Section 33 of the Act. If an employer obtains permission from a Tribunal, it could not be said that he had committed a breach of Section 33 of the Act by discharging the workmen, even though it may turn out that the permission was not obtained properly. Even if the correct procedure was not followed before granting the permission or even if the permission was granted *ex parte*, it would still be a valid permission and it could not be said that the employer had committed a breach of Section 33 if he discharged a workman in pursuance of such a permission. See the cases of Kamla Mills Limited, and their workmen, *1951, Vol. II, L.L.J., p. 519* and Associated Cement Companies Limited, *1953*, Vol. II, L.L.J., p. 395. I therefore hold that there has been no breach of Section 33 of the Industrial Disputes Act and the present complaint would not be maintainable.

9. Even if the complaint was maintainable, I think it would fail on merits. The complainants were discharged in the month of September 1953, on the ground that they were surplus to the requirements of the management. Admittedly they were working as chaprasis at rice godown No. 4. Complainant No. 2 has admitted in his deposition that the rice in godown No. 4 was shifted to rice godown No. 6 and godown No. 4 was closed. This would mean that the chaprasis serving at godown No. 4 became surplus to the requirements of the management and the management were entitled to retrench them.

10. It was urged that persons junior to the complainants were continued in service and also that after the retrenchment of the complainants, new people were taken up without a chance being given to the complainants. The only instance alleged of a person who was junior to the complainants being retained in service is that of Ajodhya Prasad. There is however nothing beyond the bare word of the complainant No. 2 on this point. No allegation was made about this in the complaint and the opposite party could not therefore produce evidence to disprove this allegation.

11. It was then alleged that one Mahabir, who was a new man, has been appointed as a chaprasi after the complainants were discharged. That post however appears to be a temporary one and the complainant No. 2 stated in his deposition that he was not prepared to work in that post. He has also admitted that no other new man was recruited to the post of a chaprasi. He never wrote any letter to the opposite party about people junior to him having continued in service or new people being taken up nor did he give an application about it even to his own union. I am not satisfied that these allegations of the complainants that people junior to them were retained in service and that new people were taken up in service subsequently are correct.

12. The result is that in my opinion the discharge of the complainants was bonafide and was necessary in view of the fact that a particular godown was closed. There is no evidence to show that the management were actuated by any improper motives. The complainants have referred to some incident which took place in the colliery in June *1953*. *It is however to be noted that long before this*, the management had approached this Tribunal and obtained permission from it to discharge not only the present complainants but seven others. I therefore do not believe that the management was actuated by improper motives. Thus their discharge was both bonafide and proper and justified in this case. Hence even if the opposite party had committed a breach of Section 33 of the Industrial Disputes Act and even if the complaint did not fail on the ground of unreasonable delay, it would fail on merits also.

13. On the whole, the complaint fails and is dismissed.

I pass my award accordingly.

(Sd.) L. P. DAVE, *Chairman*,
Central Govt.'s Industrial Tribunal, Dhanbad.

The 13th September, 1954.

[No. LR-2(365)/VII.]

New Delhi, the 24th September 1954

S.R.O. 3154.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bombay, in the industrial dispute between the Bombay Port Trust and their workmen.

BEFORE SHRI M. R. MEHER, I.C.S. (Retd.), INDUSTRIAL TRIBUNAL, BOMBAY

REFERENCE (IT-CG) No. 3 OF 1954

ADJUDICATION

BETWEEN

BOMBAY PORT TRUST, BOMBAY

AND

THEIR WORKMEN

In the matter of an industrial dispute re: new shifts, working hours, timings of shifts, weekly off-days, working hours on Saturdays, etc.

APPEARANCES

Shri H. M. Seerwai instructed by Shri J. P. Thakkar of Messrs, Mulla and Mulla & Cragie Blunt and Caroe Solicitors and Shri S. D. Nariman—*for the Port Trust.*

Shri Sushil Kavalekar with Dr. Shanti Patel and Shri Shantaram Ansurkar, General Secretary and Asstt. Secretary, Bombay Port Trust Employees' Union—*for the workmen.*

AWARD

This is a reference by the Central Government by its notification No. LR.3(3)/54, dated the 28th April, 1954, for adjudication of an industrial dispute between the Bombay Port Trust and their workmen in respect of the following matters:

1. Whether the changes introduced by the Port Trust in regard to the new shifts, working hours, timings of shifts, weekly off-days, working hours on Saturdays and rest intervals, are fair and reasonable; if not, in what respects modifications are necessary, and what relief should be granted to the workmen, and from what date;
2. Whether the workmen should be paid compensation for the loss of overtime payments which they have been receiving in the past;
3. Whether the workmen, like Crane-drivers and Greasers, who have been demoted from higher posts from 1st December, 1953, should be restored to their original posts; and
4. whether the workmen, who were entitled to promotion to higher posts but who were not promoted by reason of their refusal to work according to the changed system should be promoted to such posts.

A notice to file a statement of claim was issued to the Bombay Port Trust Employees' Union, and the Port Trust was requested to display prominently a notice with its translations requiring such of the workmen who did not desire to be represented by the union to file a statement of claim either individually or through a registered union. On behalf of the workmen the Bombay Port Trust Employees' Union has filed the statement of claim. No separate statement of claim was filed by any other union or individual workmen. In the statement filed by the Bombay Port Trust Employees' Union (hereinafter referred to as the union) the circumstances leading to the dispute are set out. The Port Trust has, in its written statement in reply to the statement of claim, disputed some of the facts alleged by the union in its statement of claim and it will be convenient to set out a summary of the respective statements before dealing specifically with the merits of the dispute about the four matters referred to me for adjudication.

2. The dispute concerns employees in the engineering department of the Port Trust (except the dredging flotilla section). The number of workmen concerned in the dispute is about 7,800. The Central Government made the Minimum Wages Act, 1948, and the Minimum Wages (Central) Rules applicable to certain categories of workers with effect from 15th March 1951 as per a notification issued on the 7th March, 1951. By a second notification the Act and the Rules were applied to certain other categories of employees in the Port Trust with effect from the 29th March 1952. The union has stated that the Port Trust did not implement the provisions in the Act relating to hours of work, weekly day of

rest and overtime work and tried to get exemption with retrospective effect from the application of the Minimum Wages Act and the Rules. In the mean time a few test cases were filed under the Minimum Wages Act to recover the wages and in an application Misc. No. 135 of 1953 filed in the High Court by a pointsman employed in the Port Trust Railway for a writ of mandamus directing the Port Trust to give weekly holidays to the petitioner, the High Court while rejecting the petition for a writ of Mandamus on grounds of delay, etc., observed as follows:

> "The attitude taken up by the Port Trust on this question is, to say the least, far from satisfactory. It is not possible for me to part with the matter without stating that by their failure to implement this beneficient and very modest but essential and urgent requirement of the workmen to have weekly holiday the first Respondents have been guilty of inertia and indifference in a manner which is most surprising in these times of progressive labour legislation. It is not a slight or trivial matter. The contention raised by the Respondents and seriously pressed before me was that it was not clearly incumbent on the Respondents to accede to this demand of the workmen. It is a deplorable case of the Respondents wanting to avail of any plea justifiable or otherwise."

Ultimately Government declined to give exemption to the Port Trust from the application of the Minimum Wages Act and Rules, and directed the Chairman of the Port Trust to give effect to the provisions of the law without further delay. The Chairman called the representatives of various unions on 9th July, 1953 and promised them that arrangements would be made to implement the Act and the Rules and to pay arrears of overtime wages to the employees. The Port Trust, however, made drastic changes in the conditions of work of the workmen without any notice to or in consultation with labour "as if to take revenge against them". The changes were made without taking the permission of the Labour Appellate Tribunal before whom appeals against two awards of Shri S. H. Naik, Industrial Tribunal, were pending. The union wrote a letter dated 28th July, 1953 (Ex. U/6) complaining of a change in the weekly off on Sunday in some departments. The Port Trust by its letter dated 21st September 1953 (Ex. U/7) denied that any fundamental change in the weekly off had been effected and drew the attention of the union to rule 10(b)(i) and (iv) of the Rules and Regulations for non-scheduled staff. These rules are as follows:

> "(i) Subject to the provision in sub-clause (ii) of clause (a) above, all employees except those mentioned in sub-clause (i) of clause (a) above, will be allowed a weekly off on a Sunday or any other day in the week.
>
> "(iv) The employees governed by the Factories Act, 1948, and the Minimum Wages Act, 1948, will be eligible for an off-day in accordance with the provisions of those Acts."

In the letter it was further pointed out,

> "Sunday has not been fixed as a weekly 'off' for all categories of staff in the Bombay Port Trust, as assumed by you. For example, watchmen do not get a weekly 'off' on Sundays, but on any other day during the week. Similarly, the staff governed by the Factories Act are given 'offs' during the week, if they have to work on Sunday."

The union has complained that the rules and regulations were introduced during the adjudication proceedings before the Labour Appellate Tribunal and without its permission. On 17th November, 1953 the General Secretary signed an agreement with the Port Trust with regard to one section of the workers in the engineering department, *viz.*, the mobile crane section (Ex. U/10). By clause 1 of that agreement the weekly holiday was to be Sunday except in the case of such of the staff as were called upon to work on that day and they were to be given a substituted weekly holiday as prescribed in rule 23 of the Minimum Wages (Central) Rules, 1950 and that this substituted holiday was to be intimated to them. It was further agreed that the failure of the mobile crane staff to report for duty on Sunday the 15th November, 1953 should be excused as a special case and that day should be treated as a weekly holiday given to them. With regard to abstention from work by the mobile crane staff on the 16th November 1953 the Chief Engineer undertook to recommend to the Chairman that to maintain the continuity of their services the abstention from duty on that day should be treated as leave without pay. By a clause in the agreement the union reserved

its right to make a representation with regard to clause 1 referred to above. The union has stated that it agreed to these terms because the Port Trust agreed to withdraw the system of staggering holiday for a certain period and the union was given a right of representation. On the 2nd December 1953 the union wrote expressing its continued opposition to the change and by a further letter dated 10th April, 1954 (Ex. U/11) cancelled the agreement (Ex. U/10). On the 19th December 1953 the union wrote to the Port Trust (vide Ex. U/14) protesting against the introduction of a system of three shifts and changes in the hours of work, whereby night work would be a permanent feature and it further stated that the replacing of the system of giving a weekly off on Sunday was detrimental to the interests of the workers. The union has stated that it received no reply to this letter (Ex. U/14). Regarding the changes made in the hours of duty the union has complained that labourers were made aware of the orders only a day prior to their being brought into force. In the first order dated 10th December, 1953 different dates were given for different sections for implementation of the Minimum Wages Act. With regard to Sunday off the change was notified as follows:

> "As regards giving offs, the officer concerned will notify on his notice board at 8 A.M. on every Saturday the ticket Nos. of all the employees who are to attend the work on Sunday and the 'off' day for all such staff should also be notified for that week. As soon as this notice is put on the Board, the 'off' days should be marked with a letter 'O' in the Muster Book. If the staff concerned do not turn up for work on Sunday they should be marked absent on that Sunday. The staff on 'off' as noted on Muster should not be taken on duty on that day."

By the second and third orders the hours of work were changed and shift systems were introduced. These hours were so awkward that it was not possible for the workmen to report at these hours without undergoing physical strain and financial loss. Meanwhile the Chief Labour Commissioner came to Bombay and conciliation proceedings took place before him. The union has complained in para. 18 of its statement of claim that the settlement proposals made by the Chief Labour Commissioner were not acceptable to the Port Trust and the conciliation failed.

3. The Port Trust has in its written statement stated that the reference made in the union's statement of claim to the test cases filed before the Authority under the Minimum Wages Act and to the proceedings in the Bombay High Court is irrelevant and has no bearing on the issues referred to this Tribunal for adjudication. The only changes made by the Port Trust were changes in the timing of the hours of work which were necessary to ensure compliance with the provisions of the Minimum Wages Act and the Rules. Rule 24(1) provides that the number of hours which shall constitute a normal working day shall be, in the case of an adult, 9 hours. Rule 24(2) of the said Rules provides that the working day of an adult worker shall be so arranged that inclusive of the intervals for rest, if any, it shall not be spread over for more than 12 hours. To comply with these provisions it was necessary to introduce a shift system of work wherever the spread over of working hours exceeded 12 and for this purpose the Port Trust employed a large number of additional staff at an additional cost of about Rs. 20 lakhs per annum. [During the course of the hearing it was stated that the expenditure was Rs. 15½ lacs and not Rs. 20 lacs. (*Vide* Ex. C/7) where the figure is worked out at Rs. 15½ lacs.] In the past several of the workmen used to work in a shift commencing at 5-30 P.M. and ending at 8 A.M. the following day. This work is now divided into two shifts, the first working from 4 P.M. to midnight and the second shift from midnight to 8 A.M. The introduction of this system has helped to do away with former practice of most of the workmen working on overtime basis sometimes for as long as 16 hours and in some cases even 24 to 48 hours. In the revised working hours, the hours of the day shift have been retained as before. As an appeal was pending before the Labour Appellate Tribunal from the awards of Shri S. H. Naik, Industrial Tribunal, in the matter of certain disputes between the Port Trust and its employees in the engineering department, the staff which had been working in the day shift continued to be employed exclusively in the day shift so as not to give rise to any grievance that the conditions of employees concerned in the dispute had been altered to their prejudice and all work in the second and third shifts was done by workmen who in the past had been employed in the night shift or by workmen recruited on the express understanding that they would be employed for the night shift. At the time of hearing, however, it was stated on behalf of the Port Trust that there was an inaccuracy in the statement and that though orders to that effect had been issued, in the Alexandra Dock oil pipe section, the Pir Pau oil pipe section, barges and flotillas of the general workshop and the Northern division general works, the sectional heads considered it

risky to entrust the work to entirely new hands and so some of the old workmen were put on night work, but this is being set right and the concerned workmen were being posted back to the day shift. The Port Trust has stated that it is ready and willing to retake all the workmen in the three shifts. Under Regulation 13 (ii) if more than one shift is worked the workmen are liable to be transferred from one shift to another. The Port Trust has denied that the changes were introduced in a spirit of vengeance as alleged by the union and has urged that in order to apply the provisions of the Minimum Wages Act to the employees it went out of its way to extend the benefit of the Act with retrospective effect from the 15th March 1951 even to categories of employees in respect of whom the Minimum Wages Act had been applied by Government only with effect from the 29th March 1952. It also extended the benefit of the Act to the workmen who had not been notified by Government under the said Act. Large amounts were received by the workmen on account of overtime allowance, computed in accordance with the provisions of the Act, with retrospective effect from 15th March 1951. The Port Trust has also denied that the union was not consulted in the matter of the introduction of the new system of work, introduced for implementing the Minimum Wages Act. Under the direction of the Chairman, the Chief Engineer invited the General Secretary of the union for a discussion of the matter but the latter refused to accept the basis of the altered system so it was fruitless to pursue the matter further. (This was, however, denied by the General Secretary of the Union during the hearing). The revised system of work had to be introduced expeditiously as delay would have meant continued breach of the Minimum Wages Act and the Rules. The Port Trust has stated that the permission of the Labour Appellate Tribunal was not necessary for introducing the revised system of work as it did not involve alterations in the conditions of service of work to their prejudice. The Port Trust was advised by the Attorney-General of India that none of the changes in the work could be said to constitute any alteration of the conditions of service of workmen and prior permission of the Labour Appellate Tribunal was not necessary. The allegation of the union that all workmen, except watchmen, used to have their weekly off on Sundays is denied and it is stated that the operating staff in the electrical, hydraulic, mobile cranes, hydraulic pumping station and oil pipe line sections used to work regularly on all Sundays without a compensatory day off during the week. In the establishments of the engineering department of the Port Trust which are governed by the Factories Act the workers have always been given a weekly day off on any day of the week and not necessarily on Sunday. The Rules and Regulations for the non-scheduled staff were sanctioned by Trustees of the Port Trust on the 5th February 1952 and received the approval of the Central Government under the proviso to section 22 of the Bombay Port Trust Act on the 7th April 1952. Thus the Rules and Regulations were approved before the filing of the appeal before the Labour Appellate Tribunal. These Rules and Regulations were framed and compiled as requried by the provisions of the Port Trust Act 1879 and also in compliance with an order of the Government of India dated 7th January 1949 made under the provisions of the Industrial Employment (Standing Orders) Act, 1946. These Rules and Regulations did not introduce any new conditions of service but brought together in one pamphlet all existing Rules and Regulations and in cases where there were no Rules and Regulations in force relating to any of the matters set out in the Schedule to the Industrial Employment (Standing Orders) Act, 1946, the provisions contained in the Model Standing Orders in Schedule I to the Industrial Employment (Standing Orders) Central Rules were adopted.

4. With regard to the agreement (Ex. U/10) between the union and the Port Trust with regard to the workmen in the mobile crane section the Port Trust has stated that about 123 workmen of the mobile crane section, Alexandra Dock, who turned up for duty on the 6th December 1953 resorted to a sit down strike even though the proceedings before the Labour Appellate Tribunal were then pending and so the strike was illegal. They refused to work on Sundays with a compensatory off day during the week unless they were paid for work on Sunday at double the ordinary rate of wages. The Chief Engineer of the Port Trust discussed the matter with the General Secretary of the union and as a result the agreement (Ex. U/10) was reached. By the agreement the union agreed to the staggering of the weekly holidays. The union has sought to take advantage of a clause in the agreement whereby it reserved its right to make a representation in the matter and it unilaterally cancelled the agreement. As the Port Trust had carried out the only condition which had been attached to the agreement, *viz.*, that the implementation of the change regarding the weekly off should be postponed till 6th December 1953, the purported cancellation by the union of the agreement was unjustified and ineffective. With regard to the complaint of the union that its letter dated 19th December 1953 had remained unreplied the Port Trust has pointed out that after the letter was received there were discussions between the Chief Labour

Commissioner and the representatives of the Port Trust and on 13th February 1954 the union sent a letter to the Chairman purporting to contain the minutes of the discussions and the Port Trust replied by its letter dated 25th March 1954 (Ex. U/23) pointing out certain misstatements in the union's letter dated the 13th February 1954. No reply was received to this communication. The Post Trust has therefore stated that the grievance made by the union that its memorandum dated 19th December 1953 had remained unreplied is not understood. As regards the allegation that labour was made aware of the orders only a day prior to their implementation it is pointed out that every attempt was made to come to a settlement with the union but the efforts proved unsuccessful. The allegation that the proposals for settlement made by the Chief Labour Commissioner were not accepted by the Port Trust and so the conciliation proceedings failed is denied. The Chief Labour Commissioner recommended to the Port Trust certain changes in the timings in the hours of work in the dry dock. The suggestion was immediately accepted by the Port Trust and carried into effect. The Chief Labour Commissioner felt that perhaps the permission of the Labour Appellate Tribunal was necessary to the introduction of the changes, but the Port Trust obtained the opinion of the Attorney General of India, who has advised that the proposed changes could not be regarded as in any way constituting an alteration in conditions of service to the prejudice of the workmen. The Port Trust has further stated that it is the union which did not accept the Chief Labour Commissioner's recommendations.

5. Both in the statement of claim as well as in the written statement of the Port Trust reference has been made to the proceedings before the conciliator. I have borne in mind the views expressed by their Lordships of the Labour Appellate Tribunal in the case of the Associated Electrical Industries (India) Limited (1954 —I L.L.J. p. 790 at p. 791) about the use that can be made of proceedings before a conciliator. But in the present case both the parties have sought to rely on what transpired before the conciliator and both the parties have requested that the letter of the conciliator to the Government of India (Ex. U/19) should be taken into consideration, I have therefore taken these matters including this letter into consideration, subject of course to the proposition which cannot be contested that parties cannot be pinned down with offers made by them in conciliation proceedings.

6. In the statement of claim the union asked for certain information (in the nature of discovery). On behalf of the Port Trust it was stated that the information asked for in respect of some items was irrelevant; the Port Trust objected to production of its correspondence with the Ministry of Transport; and as regards some items of information it would take some months to prepare. The application of the union was fixed for a chamber hearing at an early stage of the proceeding and an arrangement satisfactory to both sides was arrived at. The Port Trust agreed to supply before the date of hearing information in respect of certain items. With regard to the rest of the items it was agreed that if in the course of hearing the Tribunal considered that the information was necessary the Port Trust would supply it.

7. It will now be convenient to deal in detail with the four matters referred for adjudication, the first of which is:—

> "Whether the changes introduced by the Port Trust in regard to the new shifts, working hours, timings of shifts, weekly off days, working hours on Saturdays and rest intervals, are fair and reasonable; if not, in what respects modifications are necessary, and what relief should be granted to the workmen, and from what date."

The revised working hours in the different sections of the engineering department and the working hours before the changes were made are shown in detail in annexure A to the written statement of the Port Trust, from which it is seen that in most of the sections of the engineering department the first shift hours were from 8 A.M. to 5-30 P.M. and the second shift hours from 5-30 P.M. to 8 A.M. the next day. In some departments there was nominally only one shift from 8 A.M. to 5-30 P.M. but the said staff continued by turns to work during the next shift, so that many a workman worked for in excess of the normal working day but earned overtime for work beyond the normal duty hours. There was no system of weekly off. The bringing into effect the important provisions of the Minimum Wages Act and Rules with regard to (a) restricting the spread over of the working day to 12 hours, (2) giving weekly offs to staff necessitated the increase in the number of shifts and additional staff had to be appointed wherever the existing staff were working beyond 12 hours or were working without a weekly rest. The Port Trust has pointed out that wherever the timings of work

were from 8 A.M. to 5-30 P.M. from Monday to Friday and 8 A.M. to 1 P.M. on Saturdays which did not infringe the provisions of the Minimum Wages Act and Rules the same have been retained and changes have been made only where the hours of duty exceeded 12 which would infringe the provisions of the said Act. The union's complaint in the statement of claim is on the following (1) night work as a permanent feature, (2) awkward timings of shifts, (3) no rest intervals for specified period, (4) discontinuation of Saturday as a half day off, (5) deprivation of the fixed day of weekly rest on Sunday. The union points out that night work is irksome and much more onerous than day work. It has referred to opinions of various writers and of committees on night work being more deleterious than day work. It is pointed out that in addition to the non-availability and paucity of transport the night workmen have to undergo other inconveniences. If they can reach home at an unusual hour they are not able to have a bath before taking food or retiring to bed because it would disturb the sleep of members of the family. Living as workers do in one room tenements they do not have sound sleep during the day as easily as at night owing to street noises and the sounds inseparable from the carrying on of household routine. The union has submitted that "it is not necessary to resort to night work in the way in which the Port Trust has done by adopting the new change" and that if night shifts are essential no shift should start or end between 9 P.M. and 8 A.M. It points out that wages were fixed for workmen in Port Trust without reference to the factor of night work. It has further pointed out that it was agreed in 1948 between the Port Trust and the union that night shift workers in the hydraulic establishment section work for 6 hours, *i.e.*, from 5-30 P.M. to 12 midnight with a rest from 8 to 8-30 P.M. though the pay was for 8 hours. In other sections there were no night shifts and night work was paid for as overtime work. If night work has to be taken in other sections the same benefits should be conceded to other workers as were conceded to the workers in the hydraulic establishment. It is further urged that it is extremely difficult and in some cases impossible for workmen to report on duty in the early hours of the day and at late hours of the night, particularly for persons who have to be on duty in the oil pipe line section at Pir Pau which situate at a distance of 4 miles from the nearest railway station, and workmen are likely to be waylaid on the way by robbers. It has further complained that there are different hours of recess for different shifts, that sometimes recess is allowed at the fag end of the normal day of work and as such recess is of no use. Then it has been urged that while normally Saturday was a half working day it is now made a full working day and it is urged that the workers should be assured of a half day off on Saturday and a complete day off on Sunday. The union has asked that the changes which have been made should be withdrawn and the *status quo ante* restored. If night shift work is to be permitted some compensation in the form of increase in the wages or night shift allowance for loss of convenience and amenities and for extra expenses should be given, it is demanded that workmen in night shifts should be provided with sleeping accommodation or residential quarters near the place of work, travelling facilities from and to the residence from the place of work and canteen facilities.

8. In reply to the above contentions the Port Trust has stated that the shift system of working existed in many sections of the engineering department of the Port Trust and was not introduced as a new feature in the implementation of the provisions of the Minimum Wages Act. Night work was a permanent feature in the mobile crane section, the hydraulic pumping stations, the electrical establishments, oil pipe line sections, diesel boosting stations and loco shed section. Crane drivers were working in the second shift from 5-30 P.M. to midnight and in the third shift from midnight to 7-00 A.M. without any complaint since 1949. With regard to workmen who operate running machinery it is to be attended to all the 24 hours of the day, the rest interval has to be staggered and it is not practicable to allow the rest interval to all the employees at the same time. The workmen, therefore, mutually arrange that out of the workmen employed on the same machine half the number should take rest after 4 hours and the other half take the rest interval thereafter. Rest interval is treated as time spent on duty. It is denied that recess is given at the fag end of the shift. It is pointed out that section 57 of the Factories Act clearly contemplates night shift work and the Factories Act which contains numerous provisions for safeguarding the health and general wellbeing of the employees does not prohibit night shift work, nor does it provide for any compensatory allowance for work in the night shift. Similarly rule 24(a) of the Minimum Wages (Central) Rules contains a provision relating to night shift work, but in fixing the minimum wages no distinction is drawn between night work and day work. Also the model standing orders in Schedule I to the Industrial Employment (Standing Orders) Act, 1946 recognises the right of the industrial establishment in its discretion to have work carried out in more than one shift, without providing for extra payment for night shift work. It is urged

that if the arguments advanced by the union in support of its opposition to night work were genuine it is inconceivable that the union should ask for the abolition of the revised system of work and want the Port Trust to revert to the former system in which night work in many cases used to be done by the very men who worked during the day. Under the former system of work most of the employees in the engineering department used to work from 5-30 P.M. to 8 A.M., in many cases after having worked during the full morning shift from 8 A.M. to 5-30 P.M. It is contended on behalf of the Port Trust that the union is opposed to the revised system because it has done away with the former practice of doing excessive overtime work and getting consequent overtime earnings. It has drawn attention to the report of the Chief Labour Commissioner (Exhibit U/19) to the Government of India in which he has observed,

> "In most of the cases the employees who are required to work overtime which ranges from 4 to 8 hours a day and in some cases extended to 16 to 20 hours a day. Continuous overtime to such an extent which has been going on for many years is hardly fair and must be avoided. It can be done only by introducing second and/or third shift wherever necessary."

The Port Trust also relies on rule 13 of the Rules and Regulations for non-scheduled staff which provides that more than one shift may be worked in any department or section thereof at the discretion of the Chairman and this rule has been based on the provision in the model standing orders. These rules have been framed by the Trustees under the provisions of the Bombay Port Trust Act and have been approved of by the Central Government. The rules are therefore statutory and are determinative of the conditions of service of the employees and it has urged therefore that the revised system of night work in certain sections of the engineering department does not constitute any alteration in the conditions of service of the employees. The allegation that the present scales of pay were fixed without taking into consideration the factor of night work is denied. In several sections of the engineering department night shift working was a normal feature long before the scales of workmen revised in 1946 and again in 1948 following upon the recommendations of the Pay Commission for the scales of pay of Government employees. The allegation of the union that in 1948 it was agreed between the Port Trust and the union that the night shift workers should work for only 6 hours is denied and it is urged that all night shift workers in all sections of the engineering department including the hydraulic establishments worked for 8 hours, excepting crane drivers and other staff auxiliary to the crane drivers who worked for 6 hours because this latter staff has got to work in conjunction with dock labour staff and all work in the second shift in the docks ends at midnight, thus allowing a period of only 6 hours for the night shift. With regard to the allegation of the union that the changes in the timings of duty are awkward and inconvenient, the Port Trust has submitted that this presumably refers to the second and third shifts, that it is not an unusual or a new thing for the second shift to end at midnight, that the second shift in the docks always ended at midnight and even in the engineering department the crane men and the auxiliary staff always used to work in a shift which ended at midnight and it is, therefore, pointed out that if employees in the past had worked in shifts ending or commencing at midnight it is difficult to understand how the timings have become suddenly awkward and inconvenient. It has been further submitted by the Port Trust that if the provisions of the Minimum Wages Act are to be complied with it is not possible to avoid night shifts or to fix timings of night shifts differently from those now fixed. The allegation that workmen are required to report on duty at 5-30 A.M. on certain days in the dry dock section is denied. The morning shift in the dry dock commences at 7 A.M. As regards the oil pump line section, Pir Pau, the patrolling of the jungle has all along been done during night hours and the allegation that it is risky to walk on foot to the place of work is denied.

9. There can be no doubt that changes had to be made so as to conform to the provisions of the Minimum Wages Act and Rules and the workmen who had clamoured for the bringing into effect the provisions of the Minimum Wages Act and Rules and have reaped the advantages thereof, *viz.*, a compulsory day off, and a spread over not to exceed 12 hours and payment at double rate for work on weekly off and for overtime in respect of work exceeding 48 hours per week (which the Port Trust has made good with retrospective effect from 15th March 1951 and paid the workmen concerned in this reference a sum amounting in the aggregate to about rupees thirty-six lacs) have found that the changes necessary to bring the provisions of the Act and Rules into effect have deprived them of the benefit of earning overtime wages and they want to reversion to the old system. It is quite out of question for the Port Trust to revert to the old system and commit a breach of the provisions of the Minimum Wages Act and Rules

merely because it suits the workmen who have reaped the benefits of the application of the Act and secured large sums of money on account of overtime payment at rate prescribed by the Minimum Wages Act, with retrospective effect from 15th March 1951 to ask now for a reversion to the *status quo* ante. I also cannot accept the case of the union that the shift system and changes in the times of working were introduced to take revenge on the workers for agitating for the application of the Minimum Wages Act and Rules to the Port Trust. The changes had to be made to conform to the provisions of the Act and Rules and these changes by rendering it necessary to have additional shifts and engaging large number of extra staff have cost the Port Trust rupees 15½ lacs (*vide* Ex. C/7). In the union's statement of claim in para. 46 it is stated that the Chief Commissioner of Labour, Shri S. C. Joshi, remonstrated with the Port Trust authorities that the changes were by way of revenge because the Port Trust Authorities were made to implement the Minimum Wages Act. This is strenuously denied by the Port Trust, and I have no doubt that Shri Joshi could not have been so irresponsible as to make any such observation. His report to the Central Government (Ex. U/19) does not support the story that he considered that the changes were made on account of revenge. On the contrary the Report shows that he considered it necessary to resort to two or even three shifts to give effect to the provisions of the Minimum Wages Act. In para. 6 of his report he had stated,

> "It may be mentioned here that in the past the Port Trust employees in the Bombay Docks have been working principally in one shift and normally the shift works from 08.00 hours to 17-30 hours, with an interval of one hour's recess, from Monday to Friday and from 08.00 hours to 13.00 hours on Saturday. The working hours of some sections had been from 17.00 hours to 08.00 hours the following day, and from 17-30 hours to 08.00 hours the next day. In most of the cases, the employees were required to work overtime, which ranged from four to eight hours a day and in some cases it extended to 16 or 20 hours a day. The continuous overtime to such an extent which has been going on for many years is hardly fair and must be avoided. It can be done only by introducing second and/or third shift, wherever necessary. The Port Trust authorities decided to work the second and/or third shift and fix the working hours accordingly to eight per shift. The hours of the shifts, in the new scheme had been fixed in such a way that in some cases the shift commences and ends either at 05.00 hours and 00 hours (midnight). No rest interval had also been specified. As the men had to live at long distances, commencing and ending of the shift at such odd hours was somewhat inconvenient to the employees, due to transport difficulties. The men, therefore, resented the new scheme."

10. The union has at Ex. U/36 submitted its own proposals as "compromise proposals". According to it the duty hours should be from 8 A.M. to 8 P.M. with overtime from 5.30 P.M. onward, and the night shift from 8 P.M. to 8 A.M. with overtime pay from 2.30 A.M. These proposals are open to serious objections and are made with a view to secure a large amount of overtime pay for the workmen and are *prima facie* contrary to the policy of the law and of industrial awards. Overtime work is meant to be done if the exigencies of work so require and it would be wrong to fix hours of work only with a view that each workman should earn as much overtime as possible. Overtime work cannot be as efficient as work in the normal duty hours and it would be wrong to have an arrangement under which work is taken from tired workmen who have worked for an excessive number of hours to get overtime, instead of from a fresh batch of workmen. In Ex. U/36 the union has submitted another alternative "compromise" proposal, *viz.*, that in the first shift the hours of work may remain unaltered but there should be payment at overtime rate for 3½ hours out of the hours of duty and that for the second and third shift the normal hours of work should be from 5.30 P.M. to midnight and midnight to 6.30 A.M. (with half an hour's recess in between in each case) and that in respect of the third shift the workmen should be paid at overtime rate of 1½ times the basic wages if they are required to work till 8 A.M. This proposal is coupled with some conditions such as standby awkward duty allowance, etc.

11. In the statement of claim the union has dealt at great length with the disadvantages of night work, and an impression is given as if night work has been introduced for the first time and so it should be compensated by a night allowance for workers in the second and third shifts. The Port Trust has pointed out that in several sections of the engineering department night shift system of work was a normal and regular feature of work since 1936. In Ex. C/8 the Port

he number of workmen who worked in night shifts before the bring into effect the provisions of the Minimum Wages Act, ven rise to this dispute. That statement gives the following

Number of orkmen	Year in which shift introduced.	Remarks.
40	1950	Three shifts.
29	1949	Two shifts when oil cargo had to be loaded or unloaded.
550	Before 1946	Two shifts 8 to 5-30 P.M. 5-30 P.M. to 8-0 A.M.
300	1949	Operational gangs in three shifts.
50	Before 1946	Yard staff.
300	,,	Breakdown gang.
100	,,	Three shifts for factory workmen: greasers 2 shifts.
17	,,	Three shifts. 6-30 A.M. to 2-30 P.M.; 2-30 P.M. to 10-30 P.M. & 10-30 P.M. to 6-30 A.M.
ulic Estaindra Dock	33 ,,	Three shifts

above cases workmen were rotated and overtime payment was irs' duty (excluding an hour's recess). The union has suggested nd and third shifts the duty hours should be six and the remainertime and has stated that in 1948 it was agreed between the Port e union that the night shift workers should work for 6 hours only. The Port Trust has denied such agreement and has stated that all night shift workers in all sections of the engineering department worked for 8 hours, except crane drivers and other staff auxiliary to the crane drivers. The reason for the crane drivers and auxiliary staff working only 6 hours is that the staff has got to work in conjunction with dock labour staff and all work in the second shift in the docks comes to an end at midnight thus allowing only six hours for the night shift. The reason for the night shift in the docks working for six hours has not been given but it may be due to the hard nature of the work of loading and unloading. The Royal Commission on Labour referred to the 'heavy character' of dock work. The agreement as regards the dock workers referred to by the union is at Ex. U/33 and relates to fixation of hours of the hydraulic crane men in the second shift at 5-30 P.M. to 12 midnight with half an hour's recess.

13. The union has suggested that a night allowance for second and third shift workers or in the alternative the number of hours of normal duty should be reduced and extra hours of work paid for as overtime. It has been argued on behalf of the Port Trust that allowances are part of wages and a night duty allowance would in effect mean an increase in wages. The union had made a specific prayer for increase in wages in its applications to the authorities for referring the disputes to adjudication, but the Central Government has not included that matter in the order of reference. It is therefore urged that it is not within my jurisdiction to consider any wage increases. Issue No. 1 referred to me for adjudication is whether the changes in regard to the new shifts, working hours, timings of shifts, weekly off days, working hours on Saturdays and rest intervals are fair and reasonable. If they are not it is permissible for me to direct modifications to be made or to give such relief to the workmen as I consider to be just and proper. It is true that the general question of changes in the wage structure is not within the scope of the reference. But if it were shown that by reason of any of the changes the workmen have been put to additional expenditure it would no doubt be within the scope of my powers to direct that an allowance be given to cover such expenditure. Also if any of the changes made are not fair or reasonable, I think it could be within my power to award a special allowance to compensate for the special handicaps incidental to night work, such as the adverse effect on the health of the worker, the greater incidence of sickness, the upsetting of family and social life, etc., if the wage structure had been fixed on the assumption that there would be day duty only. The wages were revised in 1948 and in 1949 and it appears that the principle in revision was to adopt as a basis the recommendations of the Central Pay Commission in

regard to the Central Government employees. Long before 1948 there were night shifts in some sections of the engineering department of the Port Trust as well as some other departments (*vide* para. 11 above). So when wages were fixed the circumstance that some workmen had to work at night was present before the Port Trust authorities and wherever there were shifts they were rotated. The Pay Commission also was aware that in some Government departments work had to be done at night. The Pay Commission appears to have taken into consideration these factors in their recommendations. Page 230 of the Report shows that the Commission was aware that in one particular department night duty hours were less than the day duty hours.

14. In the cotton textile mills in Bombay no special allowance is given for work during the night but workmen are rotated in the shifts. The Bombay Textile Labour Enquiry Committee stated in its Report (at p. 171) that it would not suggest any extra payment for night work, but it made certain proposals including a reduction of hours so as to secure the maximum advantage to the industry. In the case of the Deccan Sugar and Abkari Co. Ltd. Samalkot and their workmen (1952-I L.L.J.633) where the Adjudicator had awarded 25 per cent. extra remuneration for night shift work, the Labour Appellate Tribunal set aside the order observing.

> "This Tribunal has for reasons therein given declined the claim of night shift workers to extra remuneration in at least two other awards, and we see no reason to adopt any different principle in the case before us. In our opinion the adjudicator was in error in giving 25 per cent. extra remuneration to the night shift worker, and his order to that effect is set aside."

In a more recent decision, *viz.*, the Asbestos Cement Co. Ltd. and their workmen (1954-I LL.J.656) their Lordships of the Labour Appellate Tribunal observed.

> "Industries fall into the two broad divisions:
>
> (1) those where continuous working is not necessary for technical reasons; and
>
> (2) those where as is the case before us, it is necessary for such reasons.
>
> In the first type, night shifts are worked with a view to have large production within a shorter period of time. From the management's point of view that has among others the following advantages. It lowers the overhead costs and thereby the cost of production is reduced which is essential to meet keen competition. It enables the industry to consume raw materials more quickly which is taken with the fact that shifts are generally increased and night shift working is resorted to in such industries when there is a great demand for the goods produced, means that there is quicker turnover of the working capital. There is then the possibility for larger profits but these considerations are not relevant and do not count where for technical reasons continuous working is essential. In an industry of the first type, namely, the cotton textile industry of Bombay, the question of night shift work was examined from all aspects by the Textile Labour Enquiry Committee at pages 164 to 177 of Volume II of its report published in 1940. That committee examined the disadvantages and discomforts to workmen working in night shifts—
> deleterious effect on health, the onerous work (
> living conditions of workmen, family life aspect,
> and effect on the problem of unemployment in
> working of night shifts and for short durations. Still the committee did not recommend abolition of night shifts where it could be abolished, technical reasons for continuous working being absent. Their recommendations were mainly influenced by considerations of the health of the worker and other considerations noticed below and one of them was that a worker should not be placed on night shift work continuously but only by rotation at reasonable intervals of time, so that the bad effect on his health by reason of night work may disappear with the nights of rest during these intervals of time. By the rotation system family and social life are disrupted only for short periods of time. Other considerations, *e.g.*, better working conditions at night, proper lighting and ventilation, etc., were made with a view to make their night work less onerous. But the fact is significant that even in an industry of the first type where continuous

working was not essential but where night-shift work is resorted to for considerations noted above, the said committee refused to accede to the demand of workmen for remuneration at rates higher than what would be paid to them or their confers engaged in day-shift work. We have not overlooked the fact that a somewhat shorter period of work for workmen engaged in night-shift work after 12 midnight was envisaged in that report. But at the same time another patent fact must not be overlooked, namely, that where the industry is of such a nature that continuous working is essential for technical reasons, the rotation of a workman into the night-shift on the same remuneration as he would be getting when working in the day-shift is a condition of service. It is "a part of the job and so no special allowance is called for," the expression used by the Kolar Gold Field Minimum Wage Committee (p. 20 of the report published in 1950). We may further stated that modification of that service condition by a tribunal on any of the grounds on which night-shift work is to be or has been deprecated is not called for; for, it must be taken that in fixing the wages of the workmen placed in the rotation in night-shifts the management must have taken those factors in consideration".

As stated above night duty is not a new feature in employment in the Port Trust; there were as many as 3 shifts in certain sections of the engineering department even before 1946 and long before the pay scales were revised. Wherever there were night shifts the shifts were rotated and under the existing Regulations the shifts are liable to rotation. In the circumstances there is no good case for giving a special night duty allowance merely because under the recent changes night shifts have been introduced in a number of sections of the engineering department to give effect to the provisions of the Minimum Wages Act in regard to a compulsory off-day and a maximum period of 12 hours for spread over of work.

15. The Port Trust is a public local authority and not run from the profit making motive. It is not that it has to have night shifts to secure large production or to lower overhead costs. But night shifts are necessary because in some cases it is necessary for technical reasons and in others because the Port Trust has to give the usual facilities of a port to incoming and outgoing ships in the interests of trade and commerce. Ships have to be loaded and unloaded at night times to prevent undue detention in the port, the electric department has to work at night to illuminate the port areas at night, there has to be continuous flow of oil and oil tankers cannot be kept unnecessarily waiting, and so on. The union's demand in its statements of claim that night work should not be done, or if allowed no night shift should start or end between 9 p.m. and 8 a.m., is clearly unsustainable.

16. Before the changes were made to implement the provisions of the Minimum Wages Act the normal working hours in most cases were 47½ hours, the day duty hours were from 8 a.m. to 5-30 p.m. with an hour's recess, and the second shift was usually from 5 p.m. to 3 a.m., the work after nine and a half hours (including one hour's recess) counting as overtime. On Saturdays the hours of duty were five, without recess. Annexure A to the written statement of the Port Trust shows that the hours of duty in the case of day duty workmen have not been altered but in a few cases the morning shift starts at 7 a.m. instead of 8 a.m. The second and third shift hours are usually from 4 p.m. to midnight and midnight to 8 A.M. respectively and are therefore 48 hours in the week, *i.e.*, half an hour more, in the week, than the day shift hours shown in annexure A. In para 46 of the statement of claim it is stated that some workmen were required to report to duty at 5-30 a.m. This is denied by the Port Trust and the statement giving the details of timings of the shift shows that no workmen are required to report at that hour.

17. If three shifts have to be worked a convenient arrangement would be to start the first shift at 7 a.m. so that the second shift can end well before midnight and the second shift workers could find it easier to get a conveyance (tram or train as the case may be) to reach home and they can use a large part of the night for sleeping, and the evils of night work would be considerably mitigated; and the third shift workers would also have a more convenient time to join. But the union has in its statement of claim made no such demand though at the time of hearing it was stated on behalf of the union in reply to my query that such an arrangement would be advantageous and acceptable to the workers. But on behalf of the Port Trust it was stated that for technical or administrative reasons it is not feasible for the morning shift in most sections to be started at 7 a.m. instead of at 8 a.m. but that the point would be further

examined. In the circumstances I do not think it necessary to give directions to change the starting time of the shifts, but I would recommend that where there are two or three shifts and the day shift starts at 8 A.M. the Port Trust authorities should consider the feasibility of starting the day shift half an hour or an hour earlier and if this can be done the second and third shifts could start half an hour or an hour earlier, as the case may be.

18. Before the changes which have given rise to this reference were made the first and second shifts started at convenient times, but a large majority of the workers worked for an excessive number of hours on overtime basis. Under the terms of reference I have power to give relief if any of the alterations made are not fair and reasonable. What is fair and reasonable in one set of circumstances may not be fair and reasonable in another. While it is true that in a few sections of the engineering department there were, before the recent changes, night shifts of eight hours each under the old conditions the number of workmen in those shifts was smaller and as long as there were opportunities of earning overtime on week days and Sundays there was no agitation for improvement in the conditions regarding night work. But under the recent changes it has been found by the workmen that while overtime earnings have been reduced to a great extent the second shift workers have to leave at inconvenient hours and the third shift workers have to come at inconvenint hours. While the normal hours of the day workers have remained unaltered at 47½ hours, the hours for night-shift workmen have been increased to 48 hours; more convenient timings for the second and third shifts would have caused less dissatisfaction with regard to the conditions of night work. It has also to be borne in mind that the Port Trust levies higher rates and charges for its services to vessels at night and from this point of view also the night shift workers deserved more consideration. In the Scindia workshop Ltd., and the Mazagoan Docks Ltd., the hours of the night shift workers are less than for the day shift workers (*vide* the evidence of the Labour Officers of the respective companies at Exhibits U/45 and U/46). In the Scindia Workshops there are about 1,500 workers of whom 250 work on the night shift. The evidence of Shri Trivedi, the Labour Officer of the Scindia Workshops as to how a similar problem as has arised in the case of the Port Trust was tackled by the Scindia Workshops Ltd., is of interest. He has stated that at first all the workmen were working in one shift. Two years ago, with a view to reduce overtime work after 4-30 p.m. the second shift was introduced. The workmen resisted the move of the company because of the loss of overtime and claimed a night allowance. The management, to compensate the workers and in lieu of all their demands, reduced the working hours of the second shift from eight to six so that workmen could reach their residences before midnight.

19. For the reasons given above I am of the view that the changes made have, in some respects, not been reasonable and some relief is necessary in respect of the night shift workers and the directions, which having regard to all the circumstances appear to be appropriate, and which I give are as follows. The normal working hours of the second and third shift workers, *i.e.*, the night shift workers should be reduced from 8 to 7 (42 hours per week) and if they are called upon to work for 8 hours they shall be paid overtime for the extra hour at one and a half the basic wage. In Ex. C/13 the Port Trust has given an estimate that this would involve an additional annual expenditure of about Rs. 11,171, and even if as a result of this direction the Port Trust finds it difficult to resist the claim of workers in other departments, if they are working under similar conditions without extra allowances, the additional burden on the Port Trust would be small. The directions in this paragraph should be given effect to within a month of the date on which this award becomes enforceable.

20. Rotation of Shifts.—In other industries wherever there are night shifts the ordinary rule is that of rotation and this benefits the night workers for permanent work on the night shifts is certainly detrimental to health. In the textile mills of Bombay, Khandesh and Sholapur there is a system of change over. The principle of change over was accepted by the International Labour Organisation, Chemical Industries Committee by a Resolution which was adopted by 76 votes to nil at the eighth Plenary sitting of the Committee in September 1952. In that Resolution there were the following clauses: (a) shifts should be periodically rotated, (b) employers should consult workers' organisation on the most suitable systems of shift rotation both from the employers' and the workers' point of view. In some sections of the engineering department of the Port Trust there were already shifts before the introduction of the recent changes and shifts were rotated. It appears from the statement of claim that where new shifts have been introduced, workmen who had not previously worked in night shifts have not been put on night shift work because it was thought that owing to the

pendency of certain appeals before the Labour Appellate Tribunal such changes could not be made so as to affect the conditions of existing workmen. Under Rule 13 of the Rules and Regulations framed with the sanction of the Central Government more than one shift may be worked in any department at the discretion of the Chairman, and where more than one shift is worked workmen are liable to be transferred from one shift to another. In the written statement the Port Trust has stated that it is willing to rotate the shifts. In the union's statement of claim there is nothing mentioned about rotation of shifts, but at the time of hearing Shri Kavlekar stated on behalf of the union that the workmen did not desire rotation. It is difficult for the union with a majority of day shift workers to hold the scales even between day and night shift workers particularly when a large number of night shift workmen appear to be new recruits. But workmen should live and let live, and it is difficult to justify a system under which a large number of wokmen are condemned to work permanently in shifts which some American writers refer to as 'graveyard shifts'. Workers ought to understand that a certain amount of inconvenience arising from change over is inevitable and should be tolerated in the interests of the workers as a whole and in the interests of the conservation of the vitality of the workers as a whole. The matter should not be approached from the standpoint of letting sleeping dogs lie and I would recommend that the Port Trust authorities should consider the advisability of rotating the shifts.

21. Canteen Facilities.—It has urged that for night shift workers there should be canteen facilities and that the canteens should supply cooked food; that the Port Trust canteen is not open at night and that, in particular refreshments should be available for workmen who have completed the second shift and also during the rest intervals in the third shift. On behalf of the Port Trust it was stated during the hearing that an experiment was formerly made of providing a mobile canteen at night and there was no demand for cooked food. It was stated however that the Port Trust was agreeable to provide canteen facilities for tea and light refreshments for the night shift workers during the rest intervals and at the close of the second shift and at any other period if it was found necessary. It was further stated that arrangements would also be made for the canteen to provide cooked food if there was sufficient demand for it. In view of this assurance on behalf of the Port Trust I do not consider it necessary to give any directions in regard to canteens.

22. Then there is a demand for sleeping facilities with cots, lockers, etc., for night workers. I have not been referred to any case in which obligation was cast on the employer to provide such facilities and the demand appear extravagant. At the time of hearing it was stated on behalf of the Port Trust that if by reason of the distance from the place of work of awkward hours of duty any workers desired sleeping accommodation after or before duty hours the Port Trust would examine the question whether facilities for sleeping could be given for sleeping in the sheds in the Port Trust area. I do not consider it necessary to give any directions on the point.

23. In the statement of claim a demand for transport for night shift workers was made but at the time of hearing the only demand on this point which was pressed by the representative of the union was that transport facilities should be provided for workers who have to report to duty at Pir Pau from Wadala, the nearest railway station which is 4 miles from Pir Pau. It appears that there are about 30 workmen in each shift. It has been pointed out on behalf of the Port Trust that no change has been introduced in this matter and that in the boosting station at Pir Pau there have always been three shifts and workmen have always reported at Pir Pau. It was further stated that there is no road at present between Wadala and Pir Pau but there is a scheme for the construction of a road, and when it is completed the Port Trust would consider making some transport arrangement particularly for the night shift workers. I do not consider it necessary to give any directions on this matter.

24. **Rest Interval.**—The union has complained that when the second and third shifts were introduced no rest hours were specified. It is urged that recess is necessary because a worker gets fatigued and loses concentration after continuous work for long time and rest is also necessary for taking meals, tea, etc., and it is no use giving this rest interval at the fag end of the normal day of the work. During the arguments it was stated that rest intervals were given at the whims of the foreman and that there should be rest intervals after every four hours of work. The Port Trust has replied that rest intervals of at least half an hour (in the case of day shifts an hour) is given to all employees. When the statement showing the revised timings of work was first prepared and exhibited on the notice boards, due to inadvertance the rest periods were not specified though in fact they were allowed. In Ex. A attached to the written statement

the hours of the various shifts are given and it is stated that in the case of shifts marked with asterisks there is a one hour recess and in the case of all other shifts the recess is half an hour which period is treated as duty but the staff are not allowed to leave the site of work. In the case of watchmen the nature of their duties is different from those of workers who continuously attend to a machine and it is not practicable to let them leave the place of duty but they get good opportunities of rest, taking meals, etc. Again running machinery has to be attended to for all 24 hours of the day and it is not practicable to allow the rest intervals to all employees at the same time but workmen mutually so arrange that out of the workmen employed half the number take rest after 4 hours and the other half takes the rest interval immediately thereafter. Where no fixed period of recess is prescribed the rest period is treated as time spent on duty. Similar practice has existed all along in respect of workmen working on running machinery and in the changes made to give effect to the provisions of the Minimum Wages Act, there has been no alteration in the system of the rest interval. It is pointed out that as a normal rule the workmen have their rest interval after 4 hours of work except in the rate event of an untoward accident or breakdown of machinery when the rest interval may not be availed of immediately after the end of 4 hour's duty. In course of the arguments it was complained that some workmen were not given half an hour's rest. Shri Seervai on behalf of the Port Trust stated that the Port Trust had given clear directions in respect of the rest interval and that if any specific complaint were brought to the notice of the Port Trust that such rest interval was not given to any employee it would be at once attended to and remedied. It is denied that the rest interval is given at the fag end of the duty hours and it is stated that it is given near about the middle of the shift hours. It appears to me that no changes have been made in the rest interval arrangement to the prejudice of the workmen. Incidentally it may be noted that the practice followed all along by the Port Trust is in conformity with the practice in the Indian Naval Dockyard in which, wherever there are three shifts all the employees are not given a break precisely at the end of half the period but at convenient times, to be arranged (*vide* Ex. XI). I do not consider it necessary to give any directions on the subject of the rest interval.

25. **Working Hours on Saturdays.**—The union has submitted that until the changes were effected Saturday was a half working day, the hours of work being from 8 a.m. to 1 p.m. Now Saturday has been treated as any other week day and it is a loss of amenity. In the written statement of the Port Trust it is stated that all workmen who prior to the introduction of the recent changes used to enjoy a half day off on Saturday still continue to do so, that crane drivers and auxiliary crane staff in the hydraulic section have all along been working full day on Saturday as also the staff operating the running machinery. Those employees who work for the whole day on Saturday have shorter hours of work during the rest of the days of the week than the employees who get a half day off on Saturday. It appears from Ex. A annexed to the written statement that even now in many cases there are shorter working hours on Saturday. Before the changes were made, in many cases Saturday was worked as full day and the hours of work after 5 hours were taken as overtime. Attention has been invited to Ex. U/37 which is a letter of the General Secretary of the Union in which he has stated,

> "The introduction has resulted in considerable loss in total earnings due to almost complete stoppage of overtime work. Every worker was getting overtime work for 4 hours a day and 8-9 hours on Saturdays besides Sundays. You will appreciate that the loss becomes unbearable as the present wages are very far from living wage or even fair wage."

This bears out the contention of the Port Trust that Saturday was not in fact observed as a half working day; it was in fact a full working day but work after 5 hours was treated as overtime. Wherever under the new arrangements Saturday is treated as a full working day there has been a corresponding reduction in the number of hours on other days and the aggregate number of hours per week has not been increased. In the course of the hearing the demand that Saturday should be treated as a half working day was not seriously pressed. In the circumtances I do not consider it necessary to give any direction in respect of Saturday working.

26. **Weekly Day Off.**—I now come to the grievance of the union with regard to the weekly day off. The union has stated that the system of granting a fixed day of rest on Sunday had been in existence since the inception of the Port Trust, that Sunday being a common holiday for employees in other occupations Sunday off is a great amenity so that employees can fix their programmes and meet their

freinds. It is admitted that according to the rules the employees were liable to be called on Sundays for work but according to the union this rule was not followed at all and only in emergent cases workmen were called on Sundays and paid overtime for the work. As pointed out by the Chairman of the Port Trust at a meeting of the Trustees on 15th December, 1953 (Ex. C/7) if Sunday had to be fixed as an unchangeable day of rest as demanded by the union, the Port Trust would have to close the Port on Sundays. Such a thing would no doubt be highly detrimental to the public interest. The union has stated that this change has been made by the Port Trust deliberately with ulterior motive to save money and to take revenge upon the workmen for agitating for the application of the Minimum Wages Act to employees in the Port Trust. It is urged that Sunday working should be only under exceptional circumtances, e.g., when there are perishable goods are to be loaded quickly. It is pointed out that the Port Trust has been charging the shipping companies at double the ordinary rate for loading and unloading on Sundays. Another grievance made is that notices with regard to workmen called to work on Sundays are fixed on preceding Saturdays and employees cannot plan their programmes as they do not know till the last hours about the weekly off. It is pointed out that those of the employees who are Christians would appreciate a holiday on Sunday so that they can attend Church mass which is obligatory. It is further urged that it is not for the sake of overtime earnings that workmen object to work on Sunday but working on Sunday is a loss of amenity which cannot be measured in terms of money. If workmen have to be called for work on Sundays they should be paid at double the ordinary rate of wages in addition to the compensatory day off.

27. The Port Trust has stated that Sunday has never been a fixed day of rest for all employees. Workmen in the electrical, hydraulic pumping station, oil pipe lines, dry docks and mobile crane sections of the engineering department had always worked on Sundays even without a compensatory off day during the week. As these workmen used to work for 7 days in the week without any day of rest they used to be paid for Sunday work at 1½ times the basic wages. In sections of the engineering department governed by the Factories Act the weekly off days were staggered and no special allowance was paid to the workmen for working on a Sunday. It was always the practice of the Port Trust to require the men to work on Sundays with or without a compensatory day of rest in the week. The practice has been embodied in rule 10(b) of the Rules and Regulations for non-scheduled staff framed by the Trustees under the provisions of s. 22(9) of the Bombay Port Trust Act which was duly inserted in the Act by the Port Trust and Ports amending Act of 1951. The special rules and regulations were framed by the Trustees in February 1952 long before the introduction of the revised system of work. Rule 10(b) provides that subject as therein mentioned all employees would be allowed a weekly off on Sunday or any other day in the week. The Factories Act, the Minimum Wages Act and the Bombay Shops and Establishments Act, all provide for the grant of a weekly rest day on Sunday or other day of the week. Before the implementation of the Minimum Wages Act when no weekly day of rest was complusory except for the staff working in establishments governed by the Factories Act a large number of employees used to work for 7 days in the week without the day of rest. Rule 23 of the Minimum Wages Central Rules provides that unless otherwise permitted by the Central Government no worker shall be required or allowed to work in a scheduled employment for all the 7 days of the week. This rule has to be complied with and as work in the Port has to be carried on on Sunday it would be impossible to allow Sunday as the weekly day of rest to all the workmen. Sunday working is necessary for even if there are no vessels waiting to be loaded or unloaded a number of workmen have to be called in connection with the opening and closing of the sea dock gates depending on the state of tide, the manning of the pumps, attending to the lighting system in the docks, keeping the hydraulic pipes charged with water, etc. It is denied that the Port Trust charges ship companies at double the ordinary rates for loading and unloading on Sundays. There is a flat rate of Rs. 300 (plus a surcharge of 33 1/3 per cent.) in addition to the normal rates for a ship working cargo on a Sunday. The reason for this additional charge to shipping working cargo on Sunday is that formerly when it was not compulsory to give a day off in the week, some of the workmen used to work for 7 days in the week including Sunday for such work which was not compensated by a weekly off the workmen used to be paid at 1½ times the basic rate of wages. In order to implement the Minimum Wages Act the weekly off day had to be staggered and a number of additional workmen had to be engaged to enable Sunday work to be done and at the same time to allow a weekly day of rest to all workmen. It is pointed out that the grievance of the union that the notices relating to weekly off are put up on Saturdays and the workmen cannot plan their programmes in advance on account of their ignorance of the weekly off day is not genuine. The Chairman at a meeting with the General Secretary of the union on 5th February 1954 informed the latter that once the union

accepted the principle of staggering the weekly holiday all further details could be mutually settled. The Chairman desired the Secretary to decide whether the union would prefer to have a weekly off fixed for a period of two or three months or whether the Sunday off should be given to the men in strict rotation. In reply to this the General Secretary of the union by his letter, dated 13th February 1954 stated that Sunday work should be performed on condition not only of a compensatory day off but on payment of double the rate of ordinary wages. In deference to the suggestion made by the Chief Commissioner of Labour the Port Trust decided to fix the off days for groups of workmen two months in advance. The union responded to this gesture by advising the cranemen and the crane auxiliary staff to strike work until the notices setting out the two months' programme of weekly off days were removed from the notice board and the previous method of notifying on Saturday the work schedule for the following week was restored. With regard to the grievance that in the case of Christian employees attending Church mass was obligatory, the Port Trust has stated that the union did not think of this in the past when these workmen all along worked on Sunday without a compensatory day off in order to get overtime allowance. The submission of the union that the workmen do not wish to work on Sundays even if they were given compensatory day off and overtime rate of payment is refuted by the fact that all these years the workmen worked on Sundays to earn overtime allowance even without a compensatory off; it is therefore urged that it should not make any difference whether the necessary relief from work and leisure to attend to domestic and social obligations is made available to a workman on Sunday or on any other day of the week.

28. The union has relied on the practice followed in the Mazagaon Dock Ltd., the Alcock Ashdown & Co. Ltd., and Scindia Steam Ships Ltd. Ex. C/3 shows that in the case of Alcock Ashdown and Co. Ltd., which is a company carrying on business as structural, mechanical and electrical engineers, shipwrights, launch, tug and barge builders, etc., the weekly closed day for men employed on ships in the docks is Sunday and men working on such day are paid 50 per cent. extra wages inclusive of dearness allowance as bonus. If, however, work is done on Sunday in lieu of a holiday declared by the company during the week the ordinary rate of bonus is paid. With regard to the Mazgaon Docks Ltd., which is a public limited company mainly engaged in ship repairs the Labour Officer of that Company was called to give evidence and he has stated that Sunday is paid for at a higher rate of 50 per cent. of basic wages and dearness allowance. The workmen got substituted weekly off in the factory only and not in the docks, but no difference is made between the factory and dock workers in respect of this payment. If a workman works on Sunday only and was absent on other days he would still get 50 per cent. extra basic wages and dearness allowance. If a workman works for more than 48 hours in a week the time he has worked on Sunday is paid at double the basic pay and dearness allowance plus 50 per cent. of basic pay and dearness allowance. Intimation of work on Sunday is given on the previous day. The witness could not say if longer notice could be given as it was a technical matter. Shri Trivedi, the Labour Officer of Scindia Workshops Ltd. which is a subsidiary company wholly owned by the Scindia Steam Navigation Co. Ltd. and is doing the business of repairing ships, launches and barges, has stated that the company engages on an average 1,500 workmen. The weekly off is Thursday. Formerly it was Sunday but on account of the shortage of electricity Thursday was substituted for Sunday but the company intends to revert to Sunday when the electricity difficulty is removed. The workmen who work on the fixed day of rest get 50 per cent. of the basic wages extra, technically called Sunday allowance. Dock workers are not given a compensatory day off so they get double the wages plus 50 per cent. basic wages as Sunday allowance because the weekly hours would exceed 48. This is under the Factories Act and even though the Act does not apply to dock workers the company gives the benefit of the Act to workers working in the docks also, as workers are interchangeable. He has further stated that the reason why extra wages are given for work on the fixed off day is that a man has to attend to his social duties and he misses them if only on a previous day the intimation of day of rest is given. He has added that the company could plan at the most for Sunday working at the most 3 or 4 days in advance. The factory workers get a compulsory off day and their Sunday allowance of 50 per cent. is inclusive of dearness allowance. The workers in the docks do not get compensatory off as they get double the wages plus the 50 per cent. basic wages as Sunday allowance because the weekly hours would exceed 48.

29. It may here be mentioned that none of the parties in this reference has referred to the practice prevailing in the Indian Naval Dockyard at Bombay. In

the Rege Inquiry Committee Report on an enquiry into conditions of labour in Dockyards in India it is stated at page 16,

> "Due to pressure of work on account of war conditions, overtime is being worked in almost all the dockyards. Payment is according to the scales laid down in the Factories Act with this modification that work between 7-15 P.M. (On Saturdays 4-15 P.M.) and 6-30 A.M. is paid at 1½ rate in the H.M.I. dockyard. Every worker who work overtime in the night is given a free one anna ration coupon in this dockyard. In the Mazagon dockyard also work between 5-30 P.M. and 7-30 P.M. in the day shift and 3-30 A.M. to 7 A.M. in the night shift is paid at overtime rates as laid down in the Factories Act. In all dockyards the work on a Sunday, during day or night, is paid at 1½ times the normal rate. Some of the dockyard call this a Sunday bonus in the H.M.I. dockyard overtime is compulsory and is allocated by turns amongst the workers. The Personnel officer keeps a careful watch to see that there is equitable distribution of work amongst the workers. Overtime is also compulsory in Port Trust."

This Report was made in 1947. From Ex. x-1 however it is seen that at present workmen in the Indian Naval Dockyard are not paid at a higher rate for work at night or on Sundays. It is however not known how many workers there are night shift workers and what are the other conditions of service there as compared with service under the Port Trust.

30. The Port Trust has pointed out that comparison should be made not with the above mentioned companies as these companies are profit making concerns while the Port Trust is a public authority constituted for the purpose of giving the facilities of a Port to outgoing and incoming ships and that if comparisons are to be made they should be made with other Port Trusts in India. In neither of the two other large ports, *viz.*, Calcutta and Madras is work on Sunday paid for at a higher rate [see letters of the Chairman of the Calcutta and Madras Port Trusts (Ex. C/6)]. In the letter of the Chairman of the Calcutta Port Trust is stated that the unions there had contended that workers were entitled under the Minimum Wages Act to payment of overtime rate on the weekly off day in addition to the substituted day off, but that the position was explained to them and they had admitted that substitution of weekly holidays without payment of overtime was legally permissible. For the union it has been argued that comparisons should not be made with Port Trusts in other parts of India where conditions are more retrograde, and after the present dispute the workers in the Madras port have also raised a dispute with regard to payment at overtime rate on Sunday. On the question of comparable concerns there is one difference between the Port Trust and the companies engaged in ship repairs and marine engineering, *viz.*, that while the latter have to quote for their services at a competitive rate, the Port Trust can levy such charges and rates as it thinks fit subject to the sanction of the Central Government. It is true that if the charges made are excessive, it would be detrimental to industry and trade and even divert traffic to other ports. All this discussion leads only to this, that comparisons between the Port Trust and other concerns can be made up to a point and should not be pushed too far.

31. The union has also invited attention to books or pamhlets showing that Sunday work in ports in Europe and the U.S.A. are paid at a higher rate (Extracts at Ex. U/53, 54 and 55). For the Port Trust it has been argued that social and economic conditions in Bombay differ from those obtaining in the ports of London, New York, Portsmouth, etc., and I agree with the contention of the Port Trust that the circumstance that Sunday work is paid there at a higher rate should not be a ground for allowing the claim for payment at an extra rate for work on Sunday. In the western countries social and religious factors have had a great hand in establishing overtime rate of payment for Sunday work. In the book "Labour Problems" (Third Edition) by Watkins and Dodd it is stated at p. 329:—

> "Sunday Labour. The industrial experience of advanced nations shows conclusively that intervals of rest are needed to overcome mental and physical fatigue and exhaustion, but the lessons of experience are frequently disregarded in the operation of industry. Enlightened employers have recognised both the social and the economic value

of a periodic day of rest. The great majority of present-day employers are unfavourably disposed to Sunday labour. Their opposition is based on a number of different grounds. Administrative difficulties are many. Supervision of Sunday work is difficult and imposes a severe strain on the foremen; inexperienced, substitute supervision entails much waste. Economic inefficiency is inevitable. Sunday labour often means high wages and increased cost of operation, is usually characterized by low output, and is followed by a loss of time during other days of the week. Social and religious factors enter into the problem. Considerable feeling prevails among workers of every class that the seventh day should be set aside as a day of rest and that it is good for body and mind. The evidence that has been collected concerning Sunday labour shows that if the maximum of output is to be secured and maintained for any length of time, a weekly rest period must be allowed. Both on economic and social grounds Sunday work should be limited to sudden, unavoidable emergencies and the making of necessary repairs that cannot be accomplished when the industry is in full operation. In industries in which continuous operation is necessary, provision should be made for one day of rest in seven for all workers."

32. For the reasons given above I do not propose to rely on the practice in western countries in adjudicating on the claim for payment at a higher rate on Sunday. The union has cited the case of the Bombay Gas Co. *v.* Workmen (1948 I.C.R. 781) decided by Shri P. S. Bakhle, Industrial Tribunal, in which the learned Tribunal observed, (p. 800)

> "If a worker has a day off on a Sunday or holiday, he can spend the day in the company of his friends and relations and such complete relaxation would not be possible on the alternate day off as on that day his friends and relations would be at work. In the Ford Award, the learned adjudicator had awarded one and a half times the normal rate of pay for the day which in my opinion also is quite reasonable. I therefore direct that the company should pay to a worker called for duty on a Sunday or a holiday half times his normal daily wages in addition to the alternate day off. Thus for working on a Sunday or a holiday an employee would get one and a half times his normal daily wages and an alternate day off."

Except this award and the award referred to by Shri Bakhle in the above quotation my attention has not been invited to any other award in which a higher wage has been allowed for work on a Sunday. In the textile mills in Bombay and many other concerns in Bombay payment is not made at a higher rate for work on Sunday if a substituted weekly off day is given, and I am not greatly impressed by the "friends and relations" aspect for allowing payment for workmen on Sunday at a higher rate. The friends and relations may not necessarily have their weekly off on Sunday or may not be at home or they may have something else to do on Sunday. And as against this "friends and relations" aspect, it may perhaps be necessary to offset at least in part the advantage that on a substituted off day a worker would have better facilities for shopping or for transacting any business for himself or his family or relations, with the post office savings, Bank or Government offices, etc., which are closed on Sundays but would be open on the off days. No useful purpose will be served in pursuing the discussion on this point; it does appear that on balance workmen have a preference for Sunday as the day off, but it should be possible for the Port Trust or any other employer to fix Sunday duty for groups of workmen by groups and this is in fact done, so that all workmen have some Sundays in the year as their day off. In the present case I propose to concede the claim of the workmen to a higher rate of wages on Sunday, not on the ground relied on by the learned Adjudicator in the case of the Bombay Gas Co. referred to above, not because in England and Norway and the U.S.A. Sunday work is paid for at a higher rate, but because there are special circumstances in this case which make it equitable to concede the claim of the workmen to a higher rate of wages for Sunday work. The considerations which have persuaded me to concede the claim are the following: (1) the Port Trust charges higher rates to masters, owners or agents of vessels in respect of every vessel permitted to work cargo (except when the cargo consists of fresh fish, fruits and vegetables, which would in the aggregate form a very small proportion of the total cargo handled). There is also a special charge in respect of each dock gate opened and each vessel permitted to work and receive or deliver cargo on Sunday (*vide* extracts from Port Trust Rules at Ex. U/56).

The Port Trust has admitted in para. 35 of its written statement that there is a flat rate of Rs. 300 in addition to the normal rates for a ship working cargo on a Sunday. It is also not disputed that this Rs. 300 is further increased to Rs. 400 by reason of the 33 1/3 per cent. surcharge. This being the case it would be reasonable that some benefit should be passed on to the workers who contribute to this additional revenue by coming on Sunday, who before the implementation of the Minimum Wages Act regularly earned for years together overtime ranging from 4 to 8 hours a day, in some cases 16 to 20 hours and had come to regard overtime earnings as part of their regular earnings (vide para. 6 of the Chief Labour Commissioner's Report at Ex. U/19). In Ex. C/12 the Port Trust has given an estimate of the increase in the wage bill which would be about Rs. 1,23,000 if the workmen concerned in this reference are paid at the rate of 1½ the basic wages. This is not an unduly heavy burden in relation to the wage bill. (2) the practice in other establishments in Bombay in which the work may not be identical, but in which conditions are comparable, viz., Scindia Workshops Ltd., Mazagon Docks Ltd., and Alcock Ashdown & Co. Ltd. (3) The Port Trust has entered into an agreement with one section of its workers, viz., dock labourers to pay at 1½ times the normal rate for work on Sundays of an essential and urgent nature (vide. U/43). At the hearing however this was tried to be explained away by stating that in actual practice the Port Trust does not take work on Sundays from the A and B category dock labourers, but from casual labourers (to whom the agreement does not apply) who are also engaged for other days of the week if and when work is available for allotment after engaging the registered employees, and casual labourers are paid at the ordinary rate for Sundays. It is further explained that before the implementation of the Minimum Wages Act many of the employees in the different departments worked on Sundays without a compensatory off during the week and so Sunday work was paid at 1½ times the basic wages. (4) Before the implementation of the Minimum Wages Act all the workmen used to earn a great deal as overtime by working on Sunday as well as other days of the week. The annual overtime earnings in the department on a basic wage bill of Rs. 58 lacs came to Rs. 10 lacs (vide Ex. c/7). This overtime was at the rate of 1½ times the basic wages. In the report of the Chief Labour Commissioner (Ex. U/19) it is stated,

> "There is great discontent amongst the employees, whose total earnings has been considerably reduced due to the stoppage of overtime. The discontent would have repercussions on their efficiency and the smooth working of the Port. I would, therefore, recommend that the dispute should be referred to an industrial tribunal, for adjudication. The items to be referred to the tribunal should include the following:
>
> 'Whether the new scheme of shift working hours and weekly offs is unfair and, if so, in what respects and to what extent the same should be changed.'"

In the discussions on demand No. 2 I shall be dealing at greater length on this subject; here it is sufficient to say that this a factor that may be taken into consideration in adjudicating on the claim of the workmen to payment at higher rates for work on Sundays. Certain categories of workers in the hydraulic department were given special allowances for loss of overtime earnings ranging from Rs. 6 to 30 per month, when shifts were introduced in that section (Vide Ex. U. 39). This benefit was later extended by giving them an allowance of Rs. 15 per month though their pay had already been fixed after taking into consideration the loss of overtime earnings. Shri Naik the learned Adjudicator in Reference No. (IT-CG) 2 of 1952 has in his award pointed out that there was no case for the grant of a compensatory allowance to crane drivers and that the Port Trust "surrendered in favour of the employees, being helpless". These workers are included in the present reference and they are already being overpaid in comparison with other workmen of the same category in the same department doing the same type of work, and in my opinion they should be excluded from the relief which I propose to give to the workmen concerned in this reference in regard to Sunday work.

33. For the reasons given above, I direct that with effect from one month of the date on which this award becomes enforceable the workmen concerned in this reference shall be paid at the rate of one and a half times basic wages (half the basic wages over the normal wage) for work on Sundays; subject to the proviso that, such of the crane drivers and other workmen drawing compensatory allowance referred in the preceding paragraph will not be entitled to payment at this extra rate as long as they are in receipt of such allowance.

34. *Demand No.* 2 is as follows:—

"Whether the workmen should be paid compensation for the loss of overtime payments which they have been receiving in the past."

The union's case is that the workmen have been earning overtime wages for many years and overtime earnings had become almost a part of their regular wages and they have adjusted their family budgets accordingly, but as a result of the introduction of shifts and staggered systems of holidays the earnings have fallen down considerably. The cost of living has gone up and there is no hope that it will come down appreciably. In the past when shifts were introduced and earnings went down the Port Trust had given a special compensatory allowance to certain categories of employees to compensate for their loss in overtime earnings. The union therefore demands that all the workmen affected by the new change and who have lost their overtime earnings should be paid the amount which they have lost because of the loss of overtime earnings from the date of introduction of the changes. The Port Trust has submitted that the demand is untenable and that it would mean that the workmen would be receiving the payment in lieu of overtime allowance even though overtime work has been abolished by the engagement of additional workmen on an annual estimated cost of approximately Rs. 15½ lacs. It is further urged that there is no case for giving compensation for making changes to secure compliance with the provisions of a statute for the benefit of labour. The revised system of work under which the workmen have to work for 8 hours a day as against 16 hours or more is an improvement in the conditions of service, affording them reasonable facilities for rest and recreation which, according to the submission of the union itself, should be rated higher than the evertime allowance. It is admitted that when in 1948 an additional shift was introduced a special allowance was given to certain workers who had suffered loss of overtime earnings. The Port Trust has submitted that that allowance was sanctioned as a matter of expediency and in view of the heavy congestion then prevailing in the docks and even then it was felt by trustees that labour was being paid something which was not due to it. The case relied on by the workmen of compensatory allowance is that of hoistmen, navganies and muccadams, labourers, chain boys and fitters in the hydraulic establishments of the Alexandra, Princess and Victoria Docks who used to put in overtime work regularly to the extent of 7 to 22 hours per week respectively. At a meeting of the Trustees on 26th April 1949 it was decided to give them compensatory allowance for loss of overtime on the following four conditions:

(1) It will be admissible only to those who were engaged on the work referred to, for a period of not less than six months prior to 1st January, 1949.

(2) The allowance will be paid only while on duty and will not form part of pay for purposes of Provident Fund, Special Contribution, Leave Allowances, Overtime, etc.

(3) It will cease in the case of a workman who is promoted to a higher post or is transferred to any other section in which the conditions of working are different.

(4) It will be liable to be withdrawn if a workman refused to do overtime work in the morning between 7 and 8 and at any other time, if and when required.

From the minutes of the meeting it is seen that one of the Trustees Shri Bullock remarked that the two shift system was resulting in smaller output and that it gave more leisure or off time to the workers and yet increases in wages were being proposed. Shri Master, another Trustee, asked the ground of the proposed allowance observing that as Trustees they should examine the incidence of this and such other payments on trade and industry. He added that he was not against giving labour its due but the proposal amounted to giving labour something which was not due to it. To the above criticism the Chairman's reply was as follows: (vide page 3 of the minutes):

"The Chairman said that cranemen and stevedore labour had a change of earning more under the incentive bonus scheme. The hoistmen and 3/4 other categories are also doing consequential work of a character which is somewhat closely related to the work of the Hatch labour—crane drivers and shore labourers who participate in the Incentive Bonus Scheme. When that Scheme was under discussion with the Union leaders like Mr. Asoka Mehta he actually claimed that the hoistmen and others who are now sought to be suitably compensated

should be allowed to participate in that Scheme. It was however administratively impracticable to provide for their participation in the Scheme and the only alternative was to make a small compensatory payment to the *existing* men who had been earning a fair amount by way of "overtime" for a considerable period in the past. but could not now do so by reason of two shifts working. The proposed payment is confined to a specific number of existing men and no new entrant to this field of work would be entitled to it. The men concerned have accepted this arrangement which is fair and equitable looking to their vested interests."

From this it is seen that one of the considerations for sanctioning this special allowance was that while cranemen and stevedore labour had a chance of earning more under the incentive bonus scheme the hoistmen and other categories who did work which was closely allied were not allowed to participate in the scheme. As stated above the giving of the allowance was objected to by some of the Trustees on the ground that labour was being given something which was not due to it. It is therefore clear that the giving of compensatory allowance to these persons was an *ad hoc* solution designed to remedy an *ad hoc* situation and it does not furnish a good precedent for allowing compensation for overtime in the same manner in the present case. From the minutes of the meeting dated 5th December 1953 (Ex. C/7) it is seen that before the implementation of the Minimum Wages Act the average overtime earned by the staff in the engineering department at the rate of 1½ times the basic wages was 10:06 lacs as against annual basic pay of Rs. 58:01 lacs and that the estimated increase in the expenditure caused by the arrangements necessary for implementing the provisions of the Minimum Wages Act was Rs. 15½ lacs. A substantial portion of this increase is due to the additional staff that had to be engaged but even so the overtime allowance at double the ordinary rate of wages according to the provisions of the Minimum Wages Act is estimated to be Rs. 6 lakhs. This shows that some workmen still have the opportunity of earning overtime though not on the same scale as before. Ex. A annexed to the written statement shows that in some of the shifts the workmen will earn some overtime, *e.g.*, as regards loco shed watchmen the times of duty from 8 a.m. to 8 p.m. and 8 p.m. to 8 a.m. have remained unchanged and therefore these categories of workers will, it appears, continue to get overtime at double the rate as per the provisions of the Minimum Wages Act, if the working hours on any day exceed nine or the total number of working hours in the week-exceed 48. It was also stated during the hearing that wherever under the present arrangements there is a half working day on Saturdays for workmen, they continue to do work till the second shift begins and earn overtime. A factor that has to be taken into consideration in considering the claim of the workmen for loss of overtime is that the Port Trust has paid to the workmen concerned in the dispute a sum aggregating about Rs. 36 lakhs as overtime payment by reason of the application of the Minimum Wages Act. The total sum paid in this behalf to workmen of all departments amounted to about Rs. 65 lakhs. In respect of some of the categories of workmen the provisons of the Act were brought into force some time in 1951 and in respect of sone others in 1952. The Port Trust has, however, given to all categories of wokers the overtime payment from 21st March 1951 though it was not legally bound to pay a large part of the amount and the workmen have been paid lump suns ranging from three to four figure sums in individual cases and those who earned the most overtime wages have secured the largest amounts. It would have been much cheaper for the Port Trust to have arranged for shifts by engaging additional staff than to pay such a large sum for overtime according to the Minimum Wages Act. The workmen who had worked overtime on the expectation of 1½ times the basic pay have, therefore, secured windfalls aggregating, as stated above, a sum of about Rs. 36 lakhs. It is true that to get a lump sum (which can be spent away) is a different thing from a permanent monthly allowance. but still in considering the claim for compensation for loss of overtime earnings, the factor that the workmen concerned have been paid the large sums of money referred to above cannot be ignored. Taking this into consideration and also the relief which I have awarded in respect of Sunday work and night work under the head Demand No. 1 there is no case whatsoever for giving any further compensation for loss of overtime earnings. The demand, except to the extent of the relief given by me under the head Demand No. 1, is rejected.

15. *Demands Nos.* 3 *and* 4.—These demands may be taken together. They are as follows:

(3) whether the workmen, like Crane-drivers and Greasers, who have been demoted from higher posts from 1st December, 1953, should be restored to their original posts; and

(4) whether the workmen, who were entitled to promotion to higher posts but who were not promoted by reason of their refusal to work according to the changed system should be promoted to such posts.

The union has stated in its statement of claim that a number of workmen after being promoted were demoted because they refused to work on Sundays and that they should be given promotion to their original posts from the dates of their demotion and granted all benefits including wages as if they were not demoted at all and that workmen who were entitled to promotion to higher posts but were not promoted should be promoted to the posts from the dates from which they were eligible and should be paid all benefits including wages as if they were promoted from the due dates. The union has referred to a letter received from the Port Trust on 27th April 1954 in which it was stated that certain higher posts were created for the specific purpose of staggering of the weekly off of the men governed by the Minimum Wages Act, that the posts had been filled by the promotion of the then existing staff but those who refused to work on Sundays and to take in lieu of it a day off on another day were demoted and the posts were filled by the recruitment of outsiders. The Port Trust agreed to re-promote workmen to the posts in question only if they agreed to work on Sunday if required. The Port Trust has in its written statement stated that on account of the implementation of the Minimum Wages Act it was necessary to create additional posts on a temporary basis so that necessary work could be continued to be done on Sunday and at the same time ensuring that every employee got the weekly day of rest. Appointments to those posts were made by promotion of the employees strictly in order of seniority. Before making the appointment it was explained to the employees that new posts had been created for implementing the provisions of the Minimum Wages Act and for permitting of the staggering of the weekly day of rest which had to be allowed thenceforth to all employees. They were also given to understand that the promotions were on an acting basis and temporary until further orders. In spite of this all the employees acting under advice of the union refused to work on Sunday, commencing from the very first Sunday following their promotion. In the place of the employees who refused to work on Sunday the Port Trust appointed by promotion other employees who were willng to work on Sundays, and in sections where no employees agreed to work on Sundays outsiders were recruited. Some of the old employees who had signed an undertaking agreeing to work on Sundays failed to abide by their undertaking and refused to work on the first Sunday after the signing of the said undertaking. All these employees had all along in the past been working on Sundays and their refusal was due to the directive of the union which expected that by stoppage of Sunday working the Port Trust would be coerced into accepting the union's demand for restoration of the former system of work. The Port Trust had no alternative but to revert the abovementioned workmen to their substantive posts. The union by its letter dated 10th April 1954 demanded that the workmen who had been demoted should be again promoted. The Port Trust by its letter dated 27th April 1954 offered to promote employees if they agreed to work on Sundays. This offer was with reference to employees in the hydraulic establishment where the posts had been kept vacant, but in other sections the posts had been filled by outsiders and the Port Trust was unwilling to discharge them. It has been urged that the discharge of these newly appointed workmen would have been unfair; besides it would have required the sanction of the Labour Appellate Tribunal on account of appeals which were pending before that Tribunal. In pursuance of its agreement contained in the letter dated 27th April 1954 the Port Trust has promoted all the employees in the hydraulic establishment. Some of the employees whose names have been given in the long lists annexed to the union's statement of claim have already been re-promoted and arguments were addressed to me in connection with particular workmen only. Ten workmen whose names have been given on p. 6 of the annexure to the statement of claim were promoted on 26th December 1953 and demoted later on for the reasons given by the Port Trust above. Their places have been filled in by outsiders. So also employees Nos. 3 to 7 on p. 7 of the annexure were promoted and subsequently demoted and their places have been filled in by the outsiders. Nos. 3, 4, 6, 7, 9, 10 and 11 in the list on p. 8 of the annexure were promoted and subsequently demoted and their places have also been filled by outsiders. The workmen concerned had a grievance in respect of being asked to do full time work on Sunday without any extra wages, but they could have raised an industrial dispute instead of refusing to obey orders. Some of the employees who had refused to work have already been promoted and I do not think it fair that the workmen who have been superseded by outsiders who are junior to them and recruited on a temporary basis should be permanently punished by loss of promotion and I, therefore, direct that these workmen referred to above be reappointed to the posts from which they were demoted within

a month of the date on which this award becomes enforceable. The claim of the union that demoted workmen should be restored to their original posts from the dates of their demotion and granted all benefits including wages as if they were not demoted at all is rejected. Under the direction contained in this paragraph the Port Trust will have to displace outsiders who have been appointed to certain higher posts, but these outsiders have been recruited on a temporary basis and it should be possible for the Port Trust authorities to appoint them to lower posts falling vacant by promotion of these men if they wish to be retained in the service of the Port Trust.

36. On p. 5 of the annexure to the statement of claim there is a list of 10 workers who, according to the union, were promoted but have been demoted. In the course of the hearing it was also stated that though they have been demoted they are doing the work of higher grade from which they have been demoted. This has been denied by the Port Trust. It has been stated on behalf of the Port Trust that these men were promoted and demoted for refusing to do work on Sunday, but that it is proposed not to fill the above mentioned vacancies. They were promoted under the following circumstances. Originally it was intended to work two shifts in the Hughes Dry Dock for docking and undocking, but actually the working of the system has shown that this is unnecessary and that the second shift should be an auxiliary shift in which the higher categories of posts are not required. In the auxiliary shift docking and undocking is not to be done but only some preliminary work necessary for docking and undocking has to be done and therefore these vacancies have not been filled. The same applies to the workers whose names have been given on p. 7 of the annexure to the statement of claim. As these categories of posts were additional posts created temporarily and the Port Trust does not want to fill them I do not consider it proper to direct that these workmen should be appointed to the higher posts. It is not the case that outsiders or any men junior to them have been appointed to the higher posts.

37. On p. 10 of the annexure to the statement of claim the union has given a list of 42 workers of the hydraulic department who, it was alleged, were entitled to promotion but were not promoted on account of their refusal to work according to the changed system. The dispute in regard to these workmen was settled by an agreement dated 20th May 1954 between the Port Trust and the union, which is at Ex. C/11 and promotions have been given according to this agreement; so the dispute in regard to these workmen does not survive.

38. The union has given a list of workers at p. 9 of the annexure to the statement of claim who are entitled to promotion but have not been promoted. In regard to these workmen it was stated on behalf of the Port Trust that no one junior to these persons has been appointed to any higher post and the question of retaining these posts is still under consideration. These vacancies arose sometime in 1952 before the present dispute arose and are unconnected with changes made on account of the implementation of the Minimum Wages Act. Item 4 in the dispute referred to me for adjudication relates to the question whether the workmen who were entitled to promotion to higher posts *but who were not promoted by reason of their refusal to work according to the changed system* should be promoted to such posts. In the cases referred to above it is not that the workmen have not been promoted by reason of their refusal to work according to the changed system but because the Port Trust has so far not found it necessary to fill the higher vacancies. The Port Trust has still under consideration the question whether it is necessary to fill any of these higher posts but this is unconnected with the dispute regarding the refusal of workmen to work on Sundays, and it would not be within my jurisdiction to direct that these posts should be filled up by appointment of persons whose names have been given on p. 9 of the annexure to the statement of claim. But assuming that I have jurisdiction to do so, no good case has been made out for directing that the Port Trust should fill these vacant posts and promote these men. The result is that demand No. 3 is granted to the extent stated above and demand No. 4 is rejected.

Bombay, the 3rd September 1954.

(Sd.) K. R. WAZKAR,

(Sd.) M. R. MEHER,
Industrial Tribunal.

[No. LR. 3(3)/54.]

Secretary.

New Delhi, the 27th September 1954

S.R.O. 3155.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri B. N. Bhattacharjee, a workman of the Kotma Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION NO. 64 OF 1954

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of Industrial Disputes Act.

PRESENT

Shri L. P. Dave, B.A. LL.B.—*Chairman.*

PARTIES

Shri B. N. Bhattacharjee, Assistant Junior Surveyor of the Associated Cement Cos., Kotma Colliery, Distt. Shahdol, Vindhya Pradesh—*Complainant.*

Vs.

The Management of the Associated Cement Cos. Ltd., Kotma Colliery, P.O. Kotma Colliery, Distt. Shahdol, Vindhya Pradesh—*Opposite party.*

APPEARANCES

Shri R. L. Malviya, Vice-President, Indian National Mine Workers Federation, Dhanbad—*For the complainant.*

Shri R. H. Ranga Rao, Senior Personnel Officer, Associated Cement Companies Limited, Bombay—*For the opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleged that he was working as a workman of the opposite party and that he had been dismissed on 15th October 1953 during the pendency of Reference No. 6 of 1952 without a permission of this Tribunal. He therefore claimed reinstatement with full pay for the forced period of unemployment.

3. The opposite party urged that there was no dispute, much less an industrial dispute, between them and their workmen and the inclusion of their name in Schedule I of the order of reference of Reference No. 6 of 1952 was bad; and also that the complainant was not a workman. They further alleged that it was detected by their auditors that the complainant had made some over measurements in favour of contractors. An inquiry was held in the matter and it was found that it was against the interests of the opposite party to continue him in service. Instead of dismissing him, however, they took a sympathetic view and discharged him from service. It was, therefore, urged that the complaint should be dismissed.

4. It is an admitted fact that the complainant was working as an Assistant Junior Surveyor at the Kotma Colliery of the opposite party. On 13th October 1953, he was given a month's notice of discharge. He has therefore filed the present complaint, urging that the opposite party had committed a breach of Section 33 of the Industrial Disputes Act by discharging him during the pendency of Reference No. 6 of 1952 without the permission of this Tribunal.

5. Three preliminary points were raised by Mr. Ranga Rao on behalf of the opposite party. The first was that there was no dispute, much less an industrial dispute, between the opposite party and their workmen and hence the order of reference in Reference No. 6 of 1952 was not valid and that the opposite party had moved the Government to delete its name from the order of reference. He also argued that the order was invalid because the Government of Inida did not appear to have applied its mind before passing the said order. In my opinion, these contentions cannot be accepted.

6. The order of reference in the above reference was to the effect that "whereas the Central Government was of opinion that an industrial dispute existed or was apprehended between the employers in relation to the collieries mentioned therein and their workmen regarding the matters specified in Schedule II annexed to the order, and whereas Central Government considered it desirable to refer the dispute for adjudication, it referred the said dispute for adjudication to this Tribunal in exercise of the powers conferred by Section 10 of the Industrial Disputes Act".

7. It is an admitted fact that the Kotma Colliery belonging to the opposite party was one of the collieries specified in the above order. Schedule II annexed

to the above order dealt with the matters in dispute. They were two. The first was whether the workmen were entitled to full pay and allowances for the holidays on 15th August 1950, 26th January 1951, 15th August 1951, and 26th January 1952. The second point was whether the workmen should receive full pay and allowances for the holidays on the Independence day and Republic day in future.

8. Mr. Ranga Rao contended that the opposite party was giving paid holidays to their workmen even before the order of this reference and there was no dispute between the opposite party and their workmen rgarding giving of paid holidays on the Independence Day and Republic Day and hence it should not have been made a party to the above reference. In this connection, it was alleged on behalf of the complainant that the opposite party was not giving full wages to their workmen on these holidays. I was told by Mr. Ranga Rao and the Manager of the Kotma Colliery that before August 1953, the colliery was paying an equal amount of wages to all their workmen on the Independence Day and Republic Day and that this amount was worked out on the average earnings of all the workmen taken as a whole. It was also conceded that some workmen therefore got less than one day's full wages on these days (while some got more). It could not therefore be said that all workmen were being given full pay and allowances for the above holidays and hence it could not be said that there was no dispute on this point.

9. It may then be noted that even if the opposite party was paying full pay and allowances then (*i.e.*, in the past) nothing prevented them from stopping payment in future. Point No. 2 in Schedule II of the order of reference deals with the question of payment of full pay and allowances for these holidays in future. It could not be said that no dispute could be apprehended on this point. It may be noted that it is not necessary that there should be actually an existence of a dispute before a matter can be referred to adjudication; but it can be so referred, even if the Government is of opinion that the Industrial dispute is apprehended. In the circumstances, I think that *prima facie*, an industrial dispute existed or at least was apprehended. In any case, there is nothing to show that the opinion of the Central Government was not correct.

10. I may then mention that the opposite party wrote a letter to the Government stating that there was no dispute between it and its workmen and its name should be deleted. I am told that the Government informed the opposite party that it should approach this Tribunal in this connection. Admittedly the opposite party did not appear before this Tribunal nor did it make a request that its name should be deleted. It would not now be open to it to say that the opinion of the Central Government that the industrial dispute existed and or was apprehended between the opposite party and its workmen was not correct.

11. I may then refer to section 10 of the Industrial Disputes Act. Under Sub-Section (1), the Government can, if it is of opinion that an industrial dispute exists or is apprehended, refer the dispute for adjudication to a tribunal. Under Sub-section (2), the Government would have to make a reference to a Tribunal if the parties to a dispute apply to it for the purpose. Under Sub-section (3), the Government has the power to prohibit the continuance of a strike or lock-out after an industrial dispute is referred to a Tribunal. Sub-section (4) deals with the powers of the Tribunal about the adjudication of points referred to it. Sub-section (5) then lays down as under:—

> "Where a dispute concerning any establishment or establishments has been or is to be, referred to a Tribunal under this Section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishment of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments"

This would mean that even if there was no dispute between a particular establishment and its workmen, the Government could include that establishment in an order of reference, if the Government felt that the dispute was of a nature in which the other establishment or establishments were interested or were affected. Hence even if there was no dispute or even if no dispute was apprehended between the opposite party and its workmen regarding giving of holidays with full pay on

the Independence Day and Republic Day, the Government had power under Sub-Section (5) of Section 10 to include its name in the order of adjudication.

12. It was however argued by Mr. Ranga Rao that the order of reference did not mention that the order was made under sub-section (5), so far as the opposite party was concerned. In my opinion, it was not necessary to do so. If the order of reference only mentioned sub-section (1) of Section 10, the contention of Mr. Ranga Rao would have some force; because a reference under Section 10(1) can only be made if the Government was of opinion that a dispute existed or was apprehended. The existence or apprehension of a dispute regarding a particular establishment was not necessary for including that particular establishment in the order of reference under Section 10(5). In the present case, the order of reference mentions only Section 10. It did not mention either Section 10(1) or Section 10(5). It was really speaking not necessary for the Government to even mention that it was making a reference under Section 10. It could have, without making any reference that it was acting in exercise of powers conferred on it under Section 10 of the Act merely said that it was referring the dispute for adjudication to the Tribunal. The fact that the Government did not specifically mention that the order of reference was made under Section 10(1) regarding particular employers and under Section 10(5) regarding other employers could not mean that the Government had not applied its mind before making the order.

13. In this connection, I may point out that 1078 collieries were made parties to the above order of reference. It thus appears that all collieries existing in the whole of India were included in the above order of reference. This fact would clearly show that the Government had in mind Section 10(5) and that it was making the reference in respect of all collieries, even though there may not have been any dispute on this point in a particular colliery or collieries. In my opinion, therefore, the order of reference was perfectly valid and as the opposite party was a party to it, Section 33 would apply to it and it could not dismiss, discharge or punish a workman or alter the conditions of his service to his prejudice during the pendency of such reference without the permission from this Tribunal, and if it did so, it would be guilty of breach of Section 33 and the aggrieved workman would be entitled to file a complaint under Section 33A.

14. The second objection raised by Mr. Ranga Rao was that the present complaint has been filed after an unreasonable delay and must be dismissed. Admittedly the complainant's services were terminated from 15th October 1953. At that time reference No. 6 of 1952 was technically pending before this Tribunal. No doubt the award of this Tribunal was published in the *Gazette of India* dated 10th October 1953; but under Section 20(3) read with Section 17A of the Act, proceedings must be deemed to have concluded from 10th November 1953; and till that date, the proceedings must be deemed to be pending before this Tribunal. By discharging the complainant on 15th October 1953 without obtaining the permission of the Tribunal, the opposite party did commit a breach of Section 33 of the Act and the complainant was entitled to make a complaint under Section 33A of the Industrial Disputes Act.

15. Section 33 of the Act prohibits an employer *inter alia* from discharging any workman concerned in any dispute which may be pending before a Tribunal without the express permission in writing from that Tribunal. Section 33A lays down that if an employer commits a breach of Section 33, the aggrieved employee may make a complaint in writing to the Tribunal. This section does not provide in express terms the time during which the complaint under that section should be made; but it does not give a right to an aggrieved workman to make a complaint after an indefinite period. It is implicit in the section that the complaint must be made within a reasonable time of the act complained of. The true position would be that a complaint under this section must be made as far as possible during the pendency of the proceedings and if it is made after such pendency, it should be made within a reasonable time. See the decision of Labour Appellate Tribunal of India in the case of General Motors (India) Limited, 1954, Vol. I, L.L.J., p. 676. It is true that this was a case under Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950; but that section is similar to Section 33A of the Industrial Disputes Act and the principles laid down in the above case would also be applicable to the present case.

16. Now, in the present case, the complaint was filed on 19th June 1954. As I mentioned above, the pendency of reference was over from 10th November 1953. In other words, the complaint has been filed more than seven months thereafter. It may also be noted that the complainant's services were terminated on 15th October 1953 and thus this complaint has been filed more than eight months thereafter. On the fact of it, therefore, the complainant has been guilty of unreasonable delay.

17. In the complaint, the complainant has alleged that after his discharge, the labour union had made a representation in the matter to the Conciliation Officer, but nothing had happened so far and that the delay in submitting the complaint should therefore be excused. In its written statement, the opposite party admits that the labour union has made some representation in the matter to the Conciliation Officer who had sent union's letter to the opposite party for its comments. It appears that the opposite party gave a reply to that letter on 14th November 1953, and a copy thereof was sent by Conciliation Officer to the labour union on 19th November 1953, and further that the labour union submitted their comments on 25th November 1953. Nothing appears to have been done after this.

18. Merely because a person approached the Conciliation Officer, it would be no ground for his not filing a complaint before the Tribunal within a reasonable time. After all, the Conciliation Officer's powers are merely recommendatory. Under Section 33A, an individual workman aggrieved by an act of the management in commiting a breach of Section 33 of the Act, has a right to approach the Tribunal and the Tribunal is bound to treat that complaint as if it was a reference made to it. Thus normally in such a case, a person should ordinarily approach the Tribunal rather than the Conciliation Officer. In any case, if the conciliation proceedings did not end within a reasonable time, a workman should not wait for an unreasonable time before filing a complaint.

19. In this connection, I may refer to the evidence of the complainant Exhibit 7. In his examination in chief, he stated that about 10 or 12 days after he was given a notice of termination of his services, he left the colliery and went to Calcutta. He has further said that before this, he had happened to meet the Conciliation Officer, who had come to Kotma and gave a complaint to him in writing. It may be noted that the complainant has not made such an allegation in the complaint about his having himself made any complaint to the Conciliation Officer. On the contrary, in the complaint, it is stated that it was the labour union who had made a representation in the matter to the Conciliation Officer. The complainant admits that he has not got a copy of the letter said to have been written by him to the Conciliation Officer. I do not believe his allegation that he had made a complaint to the Conciliation Officer.

20. The complainant then says after going to Calcutta, he was in search of a job and had to go to different places and he secured a job in April 1954. He has further said that on 22nd May 1954 he went and saw the Conciliation Officer at Dhanbad, who told him that Conciliation Officer had no power to order the management to reinstate a person and he advised him that he should file a complaint before the Tribunal. He further said that after this he consulted a trade union worker at Dhanbad and then wrote a letter to Mr. Nair (General Secretary of the Labour Union at Kotma), informing him of all the facts and asking him to draft a complaint for him. The complainant lastly said that Mr. Nair then sent him a draft and the complainant typed the present complaint accordingly and signed and presented it to the Tribunal. In other words, the complainant almost gave a go-by to the allegation made in the complaint for the late filing of the complaint and put forward a new case that the delay in filing the complaint was due to the fact that he had no idea about his right to file a complaint before the Tribunal till he consulted the Conciliation Officer, Dhanbad, in May 1954. In my opinion, the statements made by the complainant in this connection are false.

21. If we look at the complaint filed before this Tribunal, it would appear that it was typed sometime in February 1954. The letter of authority produced by the complainant along with the complaint in favour of Shri Malviya and Shri Nair was typed in 1953 and showed the address of the complainant as care of Labour Union, Kotma colliery. When these facts were brought to his notice, the complainant admitted that he had written to Mr. Nair before February 1954 to prepare a draft for the complainant and that Mr. Nair did not send him a draft but sent him the necessary typed copies for signature in February 1954. He further admitted that in 1953, Mr. Nair had advised him to file a complaint before the Tribunal. These statements of the complainant clearly show that his allegation that before he met the Conciliation Officer, Dhanbad, on 22nd May 1954, he did not know that he could have filed a complaint before the Tribunal is false.

22. The above statements of the complainant further show that he had been advised in 1953 that he should file a complaint before the Tribunal. A letter of authority from him was typed in 1953, presumably before he left Kotma Colliery (*i.e.* before the end of October 1953). The complaint was sent to him for his signature at least in February 1954. In spite of all this, it was not till 19th June

1954 that he filed the present complaint. In my opinion, the complainant has been guilty of unreasonable delay and his complaint must be dismissed on this point.

23. The third preliminary objection raised by Mr. Ranga Rao was that the complainant was not a workman. As I said above, it is an admitted fact that at the relevant time the complainant was working as an Assistant Junior Surveyor. In his deposition, the complainant has stated that his duties were to prepare maps, to make surveys underground, to prepare contractors' bills and to check them, to prepare departmental progress reports, and to write usual correspondence. He had however later on to admit that it was not ordinarily his duty to write the correspondence but it was the duty of the Head Surveyor; but if the Head Surveyor was absent, the complainant had to do that work. That would not make the complainant a workman because he was doing this work not in his capacity as Junior Assistant Surveyor but because he happened to be acting for someone else at that time.

24. It may be noted that the complainant joined the colliery in 1948. For the first two years, he worked as apprentice and was then appointed as Assistant Junior Surveyor. It however appears that his duties, when he was first appointed to this post were not the same as at the time when his services were terminated. It appears that in 1951 or so, the colliery appointed a draughtsman. Thereafter several of the duties which the complainant was then performing were taken away from him and were performed by the draughtsman. It will be the normal duties of the complainant at the time of the termination of his services that would decide the question whether he was a workman or not. Looked at from this point of view, it is admitted by the complainant that after the appointment of a Draughtsman in 1951, it was not the part of his (complainant's) duty to prepare maps. He however says that even then he did sometimes prepare a map but it is not shown that he was asked to do so by his superiors. If a person does a particular work though it is not part of his duty to do so and though he has not been directed to do so by his superiors, he could not take advantage of the fact that he was performing that duty for saying that he was a workman.

25. The complainant has admitted that there were (other) clerks in the colliery who had been entrusted with the work of preparing the bills of the contractors. He has also admitted that during 1951 to 1953, he had not to prepare and had not prepared a single bill of any contractor. Thus his duties appear to have been concerned with supervision of contractors' work and to check their measurements etc. Mr. Sen, Head Surveyor of the colliery, has been examined at Exhibit 15 and he has said that in 1952-53, the complainant had not to do any underground work and that his duties during these two years were supervision of surface work, *i.e.*, buildings and siding, issuing instructions to contractors regarding their work and to see that the work was properly done by them. He has also to check their bills. Thus *prima facie* the main duties of the complainant were supervisory and did not include manual or clerical work.

26. It was urged that for the purpose of checking measurements the complainant had to hold the tape when he had only one chainman to help him, and this would amount to doing manual work. I do not agree with this. Even higher officers may sometimes be required to hold the tape in their hands for the purpose of checking certain measurements. But that is done by them as an anciliary part of their checking work and it would not constitute manual work. I am therefore not satisfied that the complainant had to do any manual or clerical work as part of his normal duty and he would therefore not be a workman as defined in the Industrial Disputes Act. The complaint would fail on this ground also.

27. Coming to the merits, it is not in dispute that a contract has been given for cutting earth to a contractor. The measurements of the work done by him were checked by the complainant in February 1953 and on the strength of it, the contractor's bill was passed and paid in that very month. In March 1953, the Controller of Accounts while auditing accounts felt that there was an over measurement. He therefore checked the measurements. The complainant's explanation was asked for and the complainant said that the manager himself should take the measurements. Accordingly the manager took measurements and found that there had been over measurements in the contractor's bill. Thereupon the excess over-payment of Rs. 750 and odd made to the contractor was recovered from him on 28th April 1953. Later on, the Controller wrote a letter about this to the Manager, who thereupon asked the complainant's explanation. The complainant denied that there has been any over-measurement and said that the correct basis for actual measurement of the cutting of earth could have been taken on the strength of pillars le . the time but as the pillars had been removed after

the bill was passed, no proper data was available for checking measurements. He further urged that the method adopted by the manager and the auditor was not correct. The opposite party's case is that they were satisfied that the complainant had been guilty in passing the over-measurements of the contractor and they therefore thought that it was not desirable to continue him in their service and that is why he was given an option to resign and on his not doing so, he was given a month's notice of termination of services.

28. Whether there had been over-measurements or not, the fact remains that it was in March 1953 that the auditor had urged that there had been over-measurements and fresh measurements were taken in March in the presence of the complainant. On the strength of these new measurements, the contractor was made to refund the excess amount on 28th April 1953. It is true that the complainant's services were actually terminated in October, but the above facts disclose that the enquiries had already been started against him by the management in March 1953. The labour union was formed towards the end of April 1953. In other words, proceedings had already been started in the matter before the formation of the union and the contractor had been made to refund the excess amount. Mr. Ranga Rao explained to me that the delay in taking action against the complainant was due to the fact that the manager had no powers in the matter and had to write to the Head Office. The manager has stated that a Senior Officer Mr. Bharucha had visited the colliery in July and at that time personally called the complainant and asked for his explanation. I thus do not believe the complainant's allegation that action was taken against him because of his alleged trade union activities

29. It was then urged that the allegations made against the complainant were false. The Tribunal has ordinarily no jurisdiction to interfere with the findings of the management, who is entitled to come to its own conclusions. All that the Tribunal must see is that the action of the management was *bona fide* and that there was evidence before them from which it was *possible* for them to come to a particular conclusion. I do not believe that the management were actuated by improper motives or that action was taken against the complainant because of his alleged trade union activities. Whether rightly or wrongly, the auditor and the manager were satisfied that the amount of earth said to have been cut by the Contractor was far in excess of the earth actually cut by him, and hence there were over-measurements and over-payment. The method adopted by them was of taking measurements of the earth thrown by the contractor at a particular place after cutting it. This method may or may not be quite correct. Actually, it was argued that this method was more advantageous to the contractor, because loose earth would show more volume than what it would have shown before its being cut. As I said above, this Tribunal has no jurisdiction to consider whether the finding of the management was correct or not; because so long as it was *bona fide,* it could not be said that it was not possible for the management to come to this conclusion. In this connection, it may be noted that the over-measurement was of a considerable extent. Out of a bill of Rs. 1,901-10-0 the contractor had to refund an amount of Rs. 750. Unless there had been over-payment, I do not think that the contractor would have made a refund of such a large amount.

30. It was argued that the measurements checked by the complainant had also been subsequently checked by the Head Surveyor. The Head Surveyor has been examined at Exhibit 15 and he has said that he had not really verified measurements and had accepted the complainant's verification as correct because he trusted him. The bill in question has been produced and it does not show that the Head Surveyor has certified that the measurements were verified by him and were correct. All that he has certified is that the measurements in the bill were correct as entered in the measurement book. The Accountant also checked the measurements with the measurement book. This would not mean that the measurements were actually verified by the Head Surveyor. It is true that Head Surveyor had a right to check the measurements; but it is common knowledge that all measurements checked and verified by a subordinate are not always checked and verified by the higher officer. Actually even the manager would have the right to check the measurements. In actual practice, however, he would not do so unless he has reason to doubt the correctness of the bill. People know that the chances of the measurements being checked by their superiors are not many. Merely because the Head Surveyor had the right to check the bills, it could not be said that there must have been no over-measurement or that the complainant would not have allowed over-measurement.

31. It is true that the manager did not ask for the Head Surveyor's explanation and also that he did not look at the measure book. This however would make no difference, so far as the present case is concerned. Even if the measurements

mentioned in the bill were the same as in the measure book, it would not necessarily mean that there were no over-measurements; because if there had been a conspiracy between the complainant and the contractor, wrong measurements would have been written in the measure book. On merits also, therefore, I do not think that the action of the opposite party was unjustified.

32. In the result, the complaint fails and is dismissed.

I pass my award accordingly.

The 8th September 1954.

(Sd.) L. P. DAVE, *Chairman,*
Central Government's Industrial Tribunal, Dhanbad.

[No. LR-2(365)III.]

S.R.O. 3156.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Sitaram Ram, a workman of the Sodepore Central Workshop of Messrs. Bengal Coal Company, Limited.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION NO. 70 OF 1954

(arising out of Reference No. 6 of 1952)

In the matter of an application U/s 33A of the Industrial Disputes Act 1947.

PRESENT

Shri L. P. Dave, B.A.LL.B.—*Chairman.*

PARTIES

Shri Sitaram Ram, Sodepore Central Workshop, P.O. Sunderchawk, P. S. Kulti, Distt. Burdwan, West Bengal—*Complainant.*

Vs.

Messrs. Bengal Coal Co. Ltd., Sodepore Central Workshop, Sunderchawk, P. S. Kulti, Distt. Burdwan, West Bengal—*Opposite party.*

APPEARANCES

Shri Jogen Gayen, President, Loyabad Labour Union, P.O. Bansjora, Distt. Manbhum—*For the complainant.*

Mr. W. J. Jameson, Chief Personnel Officer, M/s. Bengal Coal Co. Ltd., P.O. Disergarh, Distt. Burdwan—*For the opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleges that he was a workman working as a turner in the Sodeput Central Workshop of the opposite party; that during the pendency of Reference No. 6 of 1952 the opposite party suspended the complainant on 13th December 1952 on the ground that he had been arrested by the police. On his acquittal he approached the opposite party requesting them to re-employ him but they refused to do so. This amounted to change in service conditions of the complainant by dismissing him, during the pendency of Reference No. 6 of 1952 without the permission in writing from this Tribunal. Hence the present complaint.

3. The opposite party contended that on 12th December 1952 the quarters of the complainant were searched and several materials were recovered therefrom. These materials were stolen property. The complainant was prosecuted for this and found guilty by the trial court, but on appeal, the Sessions Court gave him the benefit of doubt. Thereafter the manager issued a letter to the complainant explaining the charges to him and asking him for his explanation and stating that if he did not give a reply, his services would be considered terminated. No reply was received from him. The opposite party also urged that the complainant had obtained a job elsewhere but was later on dismissed for misconduct. It was urged therefore that the complaint should be dismissed.

4. A preliminary objection was raised on behalf of the opposite party that the present complaint was filed after an unreasonable delay and should therefore be dismissed. As held in the case of General Motors (India) Limited, 1954, Vol. I, L.L.J. page 676, a complaint under Section 33A of the Industrial Disputes Act must as far as possible be filed while the proceedings are pending before a Tribunal and if it is filed thereafter it should be filed within a reasonable time. It has been held therein that though Section 33A does not provide in express terms the period during which a complaint thereunder should be filed, it is implicit in the section that it must be filed within a reasonable time. If it is not filed within a reasonable time, it would have to be dismissed.

5. In the present case, the complainant alleges that the opposite party committed a breach of Section 33 of the Industrial Disputes Act by suspending and dismissing him during the pendency of Reference No. 6 of 1952. The award in the above reference was published in the *Gazette of India* dated 10th October 1953. Hence under Section 20(3) read with Section 17A of the Act, the proceedings in the above reference must be deemed to have concluded from 10th November 1953. The present complaint has been filed on 8th July 1954, that is, almost eight months after the conclusion of the above proceedings.

6. It may then be noted that the complainant was admittedly suspended from service from 13th December 1952 (following his arrest by the police for being found in possession of stolen property). One of the contentions of the complainant is that the opposite party could not suspend him for a period exceeding 10 days either as a punishment or pending an enquiry and the above suspension was therefore illegal. That would mean that the cause of action for this complaint arose on 13th December 1952 and still the present complaint was filed as late as 8th July 1954; that is, more than 18 months after the act complained of. Even if the date of suspension is not taken to be the date which gave a cause of action to the complainant, even then the cause of action arose somewhere in June or July 1953. It appears that the complainant was convicted by the Magistrate but on appeal he was acquitted by the Sessions Court on 17th June 1953. Thereafter he applied to the management to be reinstated but without any effect. Thus the cause of action for making this complaint arose in June 1953 or soon thereafter. As mentioned above, the complaint has been filed on 8th July 1954 that is, more than a year thereafter. In any case, therefore, there has been unreasonable delay in filing the present complaint.

7. It was urged on behalf of the complainant that he had approached the Conciliation Officer for redressing the matter and that is why he did not file the complaint earlier. In this connection, it may be noted that the powers of the Conciliation Officer were merely recommendatory. If a person wanted to take advantage of the special right given to him under Section 33A of the Act to make a complaint to the Tribunal, he should do so within a reasonable time. Really speaking, he should have approached the Tribunal rather than the Conciliation Officer; but in any case, there can be no doubt that he should not have waited for a very long time to get his grievance redressed from the Conciliation Officer. If he found that the Conciliation proceedings did not give him relief within a reasonable time, he should have filed a complaint before this Tribunal at an early date.

8. It may then be noted that the complainant was acquitted by the Sessions Court on 17th June 1953. It appears that he sent an application to the management on 12th August 1953 for reinstatement. No explanation is given as to why he should have waited for nearly two months after his acquittal before approaching the management. It then appears that he approached the Conciliation Officer on 1st September 1953. He was asked on 15th September 1953 to produce four copies of his application. He did so only on 20th October 1953, i.e., he took more than a month to do so. It appears that conciliation proceedings were then fixed on 27th November 1953 but there is nothing on record to show as to what had happened at that time. On 28th December 1953 the Conciliation Officer wrote to the complainant that he should approach him through a registered trade union. Thereupon a letter was addressed to the Conciliation Officer by the Sodepur Labour Union on 9th January 1954 to take action in the matter. A reminder was sent by the complainant on 23th February 1954. Thereupon conciliation proceedings were fixed on 1st March 1954. It is again not clear as to what happened on that date; but probably the proceedings were adjourned to 15th March 1954. On 17th March 1954, the Conciliation Officer wrote two letters, one to the management and the other to the complainant. In the letter to the management, the Conciliation Officer stated that he held discussions with the complainant on 15th March 1954

and explained to him the views expressed by the management in his case and thereupon he agreed to withdraw his case but requested the Conciliation Officer to write to the management to accept his resignation and to allow him to stay in the mines quarters at least for a month. The Conciliation Officer therefore requested the management to let him know whether they agreed to this request of the complainant. In the letter to the complainant, the Conciliation Officer stated that as he had been acquitted by the Sessions Court on giving him the benefit of doubt, it has been explained to him that he was not altogether free from doubt of the offence, and that thereupon he agreed to withdraw the case before the Conciliation Officer. He further wrote that he was writing to the management to accept the complainant's resignation and to allow him to stay in the mines quarters upto 31st March 1954. The complainant was therefore requested to send to the Conciliation Officer his letter of withdrawal of the case. It would thus appear that according to the Conciliation Officer, the complainant had agreed to withdraw his complaint made by him against the management. The complainant however denies this.

9. On 22nd March 1954 the complainant wrote a letter to the Conciliation Officer, stating that he was surprised at the letter of the Conciliation Officer and he denied that he had agreed to withdraw his case. He also mentioned that as he had been acquitted by the Session Court, no matter on what grounds, he was legally entitled to be reinstated with payment of back wages. After this, there was some further correspondence between the complainant and the Conciliation Officer, but nothing came out of it and ultimately the present complaint has been filed on 8th July 1954.

10. As I mentioned above, the complainant was guilty of laches and delay even in pursuing his remedy before the Conciliation Officer. It was more than two months after his acquittal that he approached the Conciliation Officer. When the Conciliation Officer asked for copies, he took more than a month in supplying them. At least after the Conciliation Officer's letter of 17th March 1954, the complainant could have seen that he could not get relief from the Conciliation Officer. I might repeat that in any case the Conciliation Officer could not have ordered the complainant's reinstatement but could have at best made a recommendation to the management to that effect. In the letter of 17th March 1954, the Conciliation Officer expressed his opinion that the Complainant was not entitled to be reinstated. After this, at any rate, the complainant should have come to this Tribunal immediately. But he came about four months thereafter. In any case, there has been a very great and unreasonable delay on the part of the complainant and his present complaint must therefore be dismissed on this ground.

11. On merits, it may be noted that the action of the management in suspending the complainant for an indefinite period was against the Standing Orders, which lay down that a person cannot be suspended without pay for more than ten days whether it be by way of punishment or pending enquiry. It may then be noted that the complainant was convicted by the Magistrate but later on acquitted by the Sessions Court on 17th June 1953. It has been alleged by the opposite party that after this a letter was written to the complainant on 3rd July 1953 stating *inter alia* that they were satisfied that the complainant was guilty of the charges brought against him and the management could not place any further trust in him and he was therefore asked to show cause why he should not be dismissed with effect from the date of his suspension. The letter further mentions that if a satisfactory explanation was not received, the complainant's services would be considered to have been terminated with effect from the date of his suspension. The complainant denies having received this letter. There is nothing to show that this letter was sent by the opposite party, much less that it was received by the complainant. Admittedly it was not sent by registered post. If the management were contemplating taking action against an employee, they should have sent a letter of this type by registered post. It may also be noted that the letter goes to the length of mentioning that if no explanation was received, the complainant's services would be considered to have been terminated with effect from the date of his suspension. The management could not have done so. They could have served a charge sheet on the complainant; and after hearing his explanation, if any, and if they were satisfied that the complainant was guilty, they could have dismissed him from the date of that order. The procedure adopted by the management therefore does not appear to be quite proper.

12. As mentioned above, it is not in dispute that the complainant was arrested by the police on 12th December 1953 on the ground that certain stolen property were found from his possession in his quarters. He was prosecuted for this and

convicted by the Magistrate; but on appeal, he was acquitted by the Sessions Court. The complainant has alleged that as he was acquitted, no matter on what grounds, he was legally entitled to be reinstated. I do not agree with this contention. Even if the complainant was acquitted by a court of law, the management could, if they were satisfied that he was guilty, take action against him and dismissed him. In the present case, the judgment of the Sessions Court shows that certain articles were found from the room of the complainant from under his cot. The court however held that the evidence was not sufficient to prove beyond reasonable doubt that the complainant was in conscious possession of these articles, as it was for the prosecution to have proved that these articles were in the complainant's possession to his knowledge and that the complainant had obtained them fradulently. It has held that it was possible that the complainant was occupying the room but hold that the evidence did not show that on that particular day the complainant was the occupant or that he was the sole occupant. It also held that the complainant was in the verandah outside the room when it was opened and searched. I am not siting in appeal against the judgment of the Sessions Court, but I am mentioning these facts to show that though the Sessions Court may have held that the guilt of the complainant was not proved beyond reasonable doubt, it could not be said that the evidence was not such from which the management could not hold the complainant guilty of the offence with which he was charged. Stolen property was found from the room of the complainant from under his cot and he was standing outside the room when it was opened and searched. There has been no suggestion on his part that someone else was staying in the room or the like. I might repeat that the evidence may not be sufficient to establish the guilt of the complainant beyond reasonable doubt in a criminal court; but if a domestic tribunal like the management came to the conclusion from this evidence that the complainant was guilty, it could not be said that the decision was wrong or perverse. I may also mention that speaking for myself, I think that the above circumstances would show that the complainant was found in possession of stolen property and the management would be justified in dismissing him.

13. To sum up, I hold that the present complaint has been filed after an unreasonable delay. I also hold that the dismissal of the complainant was not improper. In the result, the complaint fails and is dismissed

I pass my award accordingly.

[No. LR-2(365)/II.]

The 16th September 1954

(Sd.) L. P. DAVE, *Chairman*,
Central Government's Industrial Tribunal,
Dhanbad.

ORDER

New Delhi, the 23rd September 1954

S.R.O. 3157.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the General Assurance Society, Limited, New Delhi, and their workmen in respect of the matter specified in the Schedule hereto annexed.

And whereas the Central Government considers it desirable to refer the said dispute for adjudication

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal at Dhanbad, constituted under section 7 of the said Act.

THE SCHEDULE

Whether the termination of the services of Shri Dharam Singh, Driver, General Assurance Society, Limited, New Delhi, was justified and what relief and/or compensation, if any, should be paid to Shri Dharam Singh.

[No. LR. 90(27)/54.]

P. S. EASWARAN, Under Secy.

New Delhi, the 25th September 1954

S.R.O. 3158.—In exercise of the powers conferred by section 6 of the Minimum Wages Act, 1948 (XI of 1948), the Central Government hereby directs that the following further amendment shall be made in the notification of the Government of India in the Ministry of Labour No. S.R.O. 2087, dated the 21st June 1954, namely:—

In the said notification under the heading "(2) Representatives of employers", for entry 2, the following entry shall be substituted, namely:—

"2. Shri C. K. Nair, Under Secretary to the Government of India, Ministry of Defence, New Delhi."

[No. LWI-2(25)/54.]

S.R.O. 3159.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 5 of the Minimum Wages Act, 1948 (XI of 1948), the Central Government hereby directs that the following further amendment shall be made in the notification of the Government of India in the Ministry of Labour, No. S.R.O. 2089, dated the 21st June 1954, namely:—

In the said notification under the heading "(2) Representatives of employers", for entry 2, the following entry shall be substituted, namely:—

"2. Shri C. K. Nair, Under Secretary to the Government of India, Ministry of Defence, New Delhi."

[No. LWI-2(27)/54.]

A. P. VEERA RAGHAVAN, Under Secy.

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